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September 10, 2024

**By Email**

Hon. Freda L. Wolfson  
Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, NJ 07068

**CONTAINS INFORMATION MARKED AS AEO/CONFIDENTIAL  
UNDER THE DISCOVERY CONFIDENTIALITY ORDER**

**Re:   Opposition to SaveOnSP's August 23, 2024 Motion to Compel  
      *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC*,  
      Civil Action No. 22-2632 (JKS) (CLW)**

Dear Judge Wolfson:

On behalf of JJHCS, we write to oppose SaveOnSP's August 23, 2024 motion to compel JJHCS to produce documents from eighteen custodians elicited by an overbroad search term related to the terms and conditions of JJHCS's copay assistance program ("CarePath's T&Cs"). JJHCS has already reviewed nearly 130,000 documents hitting on other search terms specifically relating to CarePath's T&Cs dating back to 2009. SaveOnSP now seeks even more—this time by demanding a search term containing highly burdensome "within 50 words" limitation, of the exact kind that SaveOnSP refused to run over its own documents. At SaveOnSP's request, Your Honor declined to compel SaveOnSP to run a search term with the "overly broad" w/50 limiter. There cannot be two sets of discovery rules in this case: having obtained its preferred ruling on w/50

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limiters, SaveOnSP must now abide by it. JJHCS already has offered SaveOnSP a reasonable compromise and remains prepared to run the same term with a tighter “within 25” limitation. This is more than sufficient.

The Court should not be misled by SaveOnSP’s claim that its latest search demand implicates only 600 more documents. Just the opposite: this motion is the first in a barrage by SaveOnSP, designed to reopen discovery as to scores of custodians. In fact, within hours of filing the instant motion (concerning eighteen custodians), SaveOnSP began demanding that JJHCS run the same disputed search over the files of fourteen *other* custodians. The Court should put a stop to these vexatious tactics, stand by its previous search term guidance, and deny SaveOnSP’s motion to compel the use of this flawed term.

## **DISCUSSION**

### **I. JJHCS’s Existing Searches Are More Than Sufficient**

JJHCS is the victim of SaveOnSP’s scheme; there are no claims against JJHCS in this case; and yet JJHCS is reviewing an enormous number of documents—across fourteen years and now **43** custodians. JJHCS is doing so at significant expense, over and above the millions of dollars in damages JJHCS incurs with each passing month that the SaveOnSP program continues.

As always, SaveOnSP has concocted various reasons why the Court should compel JJHCS to do even more. But notably absent from SaveOnSP’s motion is any discussion of what JJHCS has already agreed to produce relating to CarePath’s T&Cs and documents “regarding SaveOnSP.” For good reason: the document requests at issue in this motion<sup>1</sup> call for the same documents as at

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<sup>1</sup> Request No. 100, which seeks “[d]ocuments sufficient to show when and how JJHCS came to understand that the May-Not-Use Provision purportedly bars patients on Accumulators,

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least two of SaveOnSP’s earlier document requests, both of which were the subject of extensive negotiations between the parties. For example, in response to SaveOnSP’s Request No. 8, which calls for “[a]ll Documents and Communications with or regarding SaveOnSP,” JJHCS long has agreed to produce documents containing variations of the word “SaveOn” across more than twenty custodians. In addition, in response to Request No. 12, which seeks “all Documents and Communications regarding CarePath’s terms and conditions,”<sup>2</sup> JJHCS agreed to review nearly 130,000 documents (inclusive of families)—and indeed has produced or will produce thousands of documents from 43 custodians related to CarePath’s T&Cs across a 14-year period. Those searches were conducted using the following fifteen search terms, which we set forth here to show Your Honor just how detailed the prior searches on this topic have been:

**2009-2016**

Term	Search Hits (Family Inclusive)
(Darzalex OR Imbruvica OR Opsumit OR Remicade OR Simponi OR Stelara OR Tracleer OR Upravi OR Ventavis OR Zytiga) w/25 ((term* w/3 condition) OR T&C OR TNC OR “other offer” OR coupon* OR discount* OR “prescription savings card*” OR “free trial*”)	4,227
(CarePath OR “Savings Program” OR “Rebate Program” OR “Access Program” OR “copay assistance” OR Instant Savings Card OR YOU&I OR RemiStart OR AccessOne OR Darzalex OR	15,831

Maximizers, or SaveOnSP-advised plans from participating in CarePath,” and Request No. 101, which seeks “[a]ll Documents and Communications from before January 1, 2022 which reflect JJHCS’s alleged understanding that the May-Not-Use Provision bars patients on Accumulators, Maximizers, or SaveOnSP-advised plans.” Ex. 1 at 11 (SaveOnSP’s Tenth Set of Requests for Production, dated July 1, 2024).

<sup>2</sup> See Ex. 2 at 12-13 (SaveOnSP’s First Set of Requests for Production, dated Nov. 11, 2022); see also Feb. 6, 2024 Order (addressing search parameters).

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Imbruvica OR Opsumit OR Remicade OR Simponi OR SimponiOne OR Stelara OR Sylvant OR SylvantOne OR Tracleer OR Upravi OR Ventavis OR Zytiga OR ZytigaOne OR Invokana OR Xarelto OR Olysio OR Risperdal OR Invega) w/50 ((term* w/3 condition) OR “T&C” or “TNC” OR “other offer” OR “coupon*” OR “discount*” OR “prescription savings card*” OR “free trial”)	
(CarePath OR “Savings Program” OR “Rebate Program” OR “Access Program” OR “copay assistance” OR “Instant Savings Card” OR YOU&I OR RemiStart OR AccessOne OR Darzalex OR Imbruvica OR Opsumit OR Remicade OR Simponi OR SimponiOne OR Stelara OR Sylvant OR SylvantOne OR Tracleer OR Upravi OR Ventavis OR Zytiga OR ZytigaOne OR Invokana OR Xarelto OR Olysio OR Risperdal OR Invega) w/10 ((term* w/3 condition) OR “T&C” OR “TNC” OR “other offer” OR “coupon*” OR “discount*” OR “free trial” OR “prescription savings card”)	19,729

**2016-2023**

<b>Term</b>	<b>Search Hits (Family Inclusive)</b>
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)	53,689
“other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)	9
“This program offer may not be used with any other coupon, discount, prescription savings card, free trial, or other offer”	11,426
(Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term* w/3 condition) OR T&C OR TNC OR “other offer”) AND (maximiz* OR accumulat*)	9,031
(revis* OR rewrit* OR Chang* OR maximizer* OR accumulator*) AND (((term* OR condition*) w/50 (Stelara OR Tremfya)) w/50 (CarePath OR “Care Path” OR CP OR JCP OR WithMe))	7,987

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((coupon* OR discount* OR “prescription savings card*” OR “free trial*”) w/30 (Janssen OR Janssen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”)) AND (accumulat* OR maximiz*) AND (enforc* OR eligib* OR ineligib*)	21,078
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### Apex Search Terms

Term	Search Hits (Family Inclusive)
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)	3,213
(\$6,000 OR \$6k OR 6k OR \$9,100 OR \$8,900 OR OOP OR out-of-pocket) AND (Stelara OR Tremfya)	11,176
(“other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)) AND (Stelara OR Tremfya)	4
(eligib* OR ineligib*) AND “out-of-pocket cost” AND (Stelara OR Tremfya)	2,185
(maximiz* OR optimiz*) AND (\$6,000 OR “maximum program benefit”) AND (Stelara OR Tremfya)	2,075
(revis* OR rewrit* OR chang* OR maximizer* OR accumulator*) AND (term* OR condition*) w/50 (Stelara OR Tremfya) w/50 (CarePath OR “Care Path” OR CP OR JCP OR WithMe)	1,738

Despite these extensive review parameters, SaveOnSP complains that yet more searching is necessary because JJHCS “has not produced any documents from before January 2022 that show that [JJHCS] understood SaveOn’s services to violate the May-Not-Use Provision.” Mot. at 2. That contention is not only pretextual, it is wrong. Months ago, JJHCS produced documents

[REDACTED]

[REDACTED] E.g., Ex. 3 (JJHCS\_00224591) ([REDACTED])

[REDACTED]; Ex. 4 (JJHCS\_00224898) ([REDACTED]). SaveOnSP’s program—

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which pilfers those same funds for its own gains—are irreconcilable with that core principle. *See* Compl. ¶¶ 18-19, 48, 65, 89-90, 108-09. And as Your Honor can plainly see, the prior search terms set forth in the table above include multiple search strings that include everything from the word term near the word condition, “T&C,” “TNC”, “other offer,” and even the “may not be used” term itself. SaveOnSP itself crafted and agreed to those terms to satisfy its demands for term & condition related discovery, and yet now insists those terms are insufficient. This makes little sense. Take for example just one of the parties’ agreed-upon search terms:

- (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term\* w/3 condition) OR T&C OR TNC OR “other offer”) AND (maximiz\* OR accumulat\*)

Pursuant to this term, JJHCS reviewed every document containing variations of the words “Janssen” or “CarePath,” “T&C,” and either “maximiz[er]” or “accumulat[or].” And, because the term relies on “AND” connectors, JJHCS reviewed those files regardless of the distance between those words. In other words, if “Janssen” appeared on the first page of a document, “T&C” on the third, and “maximizer” or “maximized” on the fiftieth, JJHCS reviewed it. Certainly, this broad search would have swept in pre-2022 documents regarding JJHCS’s understanding of the May-Not-Use Provision. This cannot go on, with SaveOnSP demanding an ever-expanding list of variations at every turn, in endless pursuit of a fully explored topic. There is simply no basis for SaveOnSP to demand yet another search term given JJHCS’s exhaustive searches and productions to date.

For the same reason (among others), JJHCS will not agree to SaveOnSP’s spurious “stipulat[ions]” about the weight of the evidence regarding this disputed contract provision. *See* Mot. at 2-3. JJHCS does not agree with it. SaveOnSP is, of course, entitled to ask any remaining

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questions it has at depositions and to use JJHCS's documents to support its positions at trial. But SaveOnSP has no basis to insist that JJHCS must either acquiesce to SaveOnSP's own incorrect versions of the facts or be forced to review thousands more documents.

## **II. SaveOnSP's Proposed Term Is Overbroad and Burdensome**

SaveOnSP's search term is facially overbroad in at least two key respects. As a threshold matter, despite SaveOnSP's insistence that its term is "tailored to discovering [JJHCS's] understanding of the May-Not-Use Provision before 2022," *see* Mot. at 4, it insists that JJHCS run the term through "November 7, 2023," *id.* at 3. SaveOnSP provides no basis for almost two additional years of discovery after the "before 2022" period it claims is tailored to the needs of its defense.

More critically, SaveOnSP continues to insist on an overbroad "w/50" proximity limiter when the words "accumulat[or]" or "maximiz[er]" are much more likely to appear in tight proximity to the terms "violat[e]" or "prohibit[]" if used in the context SaveOnSP suggests (e.g., "maximizers" are "prohibited" under the "other offer" provision). SaveOnSP's intransigence with respect to the "w/50" proximity limiter featured in this term is particularly concerning in light of SaveOnSP's own positions and the Court's prior guidance. *See* Dkt. No. 283 at 3 (rejecting "w/50" limiter as overbroad). In April 2024, JJHCS asked SaveOnSP to review 3,627 documents related to SaveOnSP's "Adapt" offering elicited by a search term containing a "w/50" proximity limiter. *Id.* at 1-2. SaveOnSP refused. JJHCS sought relief from the Court, and when SaveOnSP opposed JJHCS's request, it argued that JJHCS's proposed term was overly broad because of its "w/50" proximity limiter. Dkt. No. 358-10 at 3. The Court agreed with SaveOnSP, concluding that "w/50

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may be overly broad” based on “some concerns on the tightness or closeness of the word ‘adapt’ to other relevant terms.” Dkt. No. 283 at 3.

Since the Court’s rejection of a “w/50” proximity limiter in this context, a hallmark of the parties’ negotiations has been that “commonly used word[s]” with a “‘w/50’ connector might . . . pick[] up irrelevant documents.” SaveOnSP’s Aug. 30, 2024 Mot. at 6-7 (addressing RIS RX and TrialCard search terms).<sup>3</sup> There is no basis to depart from that sound guidance here. SaveOnSP’s proposed search term employs a host of common words (“violat[e],” “bar[],” “prohibit[],” “breach[],” “preclude[],” “allow[],” or “permit[]”) in far distant range before an equally common term (e.g., “maximiz[e]”) again far distant from standard contract language.

This is why, notwithstanding the thousands of documents it has already reviewed, JJHCS is prepared to run the compromise it offered to SaveOnSP, which is more than sufficient to capture responsive documents. *See* Ex. 6 at 2 (Aug. 7, 2024 Ltr. from J. Long to E. Snow).

SaveOnSP’s Proposal	JJHCS’s Counterproposal
((violat* OR bar* OR prohibit* OR breach* OR preclude* OR allow* OR permit*) w/50 (accumulat* OR maximiz*)) w/50 (“other offer*” OR coupon* OR discount* OR “savings card*” OR “free trial”*)	((violat* OR bar* OR prohibit* OR breach* OR preclude* OR allow* OR permit*) w/25 (accumulat* OR maximiz*)) w/25 (“other offer*” OR coupon* OR discount* OR “savings card*” OR “free trial”*)

<sup>3</sup> In very limited instances, JJHCS has stood behind its requests for search terms containing “w/50” proximity limiters when the search terms were tailored to key custodians and SaveOnSP’s proposal for tighter proximity limiters resulted in only a handful of documents to review. *See, e.g.*, Ex. 5 (May 31, 2024 Search Term Proposal for Johnson and Leger) at 1-2 (requesting “w/50” as to one search term when tighter proximity limiter resulted “in only 45 reviewable documents”). But these limited circumstances are clearly distinguishable from SaveOnSP’s current demand that JJHCS run an overbroad term containing a series of common words over at least eighteen custodians.



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In rejecting that compromise, SaveOnSP insists that JJHCS should be forced to use w/50 limiters because only “600 unique documents” are at issue. *See* Mot. at 3. This is misleading because it omits that SaveOnSP recently demanded that JJHCS extend this same overbroad search to fourteen additional custodians, over and above the eighteen SaveOnSP mentions in its motion. *See* Ex. 7 (Aug. 23, 2024 Ltr. from E. Snow to J. Long) (Shubert, Goldsack, Barnard, Nichols, and Shah); Ex. 8 (Aug. 23, 2024 Ltr. from E. Snow to J. Long) (Hanculak, Kruehl-Starr, Saggese, Frechette, Sasse, McCabe, Kleemeier); Ex. 9 at 6 (Aug. 13, 2024 Ltr. from E. Snow to J. Long) (White and Penkowski). Thus, if the Court grants SaveOnSP’s wishes, the supposed “600” documents will quickly snowball into thousands or tens of thousands. And there are many other discovery disputes between the parties that are either percolating or being briefed, where SaveOnSP is continuing to insist on similar broad searches with expansive w/50 limiters. That is why it is critical that the Court reemphasize its prior guidance.

SaveOnSP should not be rewarded for making seriatim motions on a facially faulty term, of the kind that SaveOnSP itself has refused to run. The Court should deny SaveOnSP’s motion and reaffirm that the search term guidance it has provided applies with equal force to both parties. That will not only resolve this dispute, but help guide other disputes and potentially obviate other motions.

### CONCLUSION

For the foregoing reasons, SaveOnSP’s August 23, 2024 motion should be denied.

Respectfully submitted,

s/ Jeffrey J. Greenbaum  
JEFFREY J. GREENBAUM

cc: Counsel of record for SaveOnSP

# Exhibit 1

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*Attorneys for Defendant Save On SP, LLC*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

JOHNSON & JOHNSON HEALTH CARE  
SYSTEMS INC.,

Plaintiff,

v.

SAVE ON SP, LLC,

Defendant.

Civil Action No. 22-2632 (JKS) (CLW)

**DEFENDANT'S TENTH REQUEST  
FOR PRODUCTION OF DOCUMENTS  
TO PLAINTIFF**

To: Jeffrey J. Greenbaum, Esq.  
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*Attorneys for Plaintiff Johnson & Johnson  
Health Care Systems Inc.*

**PLEASE TAKE NOTICE** that pursuant to Federal Rules of Civil Procedure 26 and 34, Defendant Save On SP, LLC (“SaveOnSP”), requests Plaintiff Johnson & Johnson Health Care Systems Inc.’s (“JJHCS”), to produce for inspection and copying the documents listed in these Requests, to the office of the undersigned within 30 days of being served or at a time and place mutually agreed by the parties and ordered by the Court.

**PLEASE TAKE FURTHER NOTICE** that this demand for production of documents shall be deemed continuing in nature so as to require supplemental responses if Plaintiff or Plaintiff’s counsel obtain or locate further or additional documents subsequent to the time Plaintiff’s responses are served.

Dated: July 1, 2024

By: /s/ E. Evans Wohlforth, Jr.

E. Evans Wohlforth, Jr.

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### **DEFINITIONS**

The following definitions apply to these Requests:

1. The singular form of a word includes the plural, and vice versa.
2. Any tense of a verb includes all tenses.
3. Any natural person includes that person's agents, assigns, attorneys, employees, representatives, and successors.
4. Any entity other than a natural person includes (a) that entity's present and former agents, affiliates (foreign or domestic), assigns, attorneys, consultants, directors, divisions, employees, officers, parents, predecessors, representatives, servants, subsidiaries, and successors; (b) any person or entity, directly or indirectly, wholly or in part, associated with, controlled by, or owned by that entity; (c) and any other person or entity acting or purporting to act on behalf of (a) or (b).
5. "Accumulator" means a copay accumulator service, including (a) any service provided by Pharmacy Benefit Managers or insurance companies, or any third party providing services to the same, to manage the cost of specialty drugs by preventing manufacturer copay assistance from counting towards a patient's deductible and out-of-pocket maximum and under which members remain responsible for all or most of their plans' copays, co-insurance requirements, and deductibles once copay assistance has been exhausted; and (b) any definition JJHCS ascribes to the term "copay accumulator."
6. "Action" means this litigation styled as "*Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC*" currently pending in the United States District Court for the District of New Jersey, No. 22-2632 (JKS) (CLW).
7. "All," "any," and "each" mean any and all.
8. "And" and "or" are construed both conjunctively and disjunctively.

9. “Appeals Process” means an appeal by a patient who believes that they have been incorrectly identified as a maximizer or accumulator patient.

10. “CarePath” means the Janssen copay assistance program marketed under the name CarePath that provides financial support services for patients using specialty drugs researched, developed, and marketed by the pharmaceutical companies of Johnson & Johnson, including Janssen (as defined herein).

11. “Communication” means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.

12. “Copay Assistance” means any type of patient support that allows a drug manufacturer to pay all or some of a patient’s prescription drug cost for that manufacturer’s drug.

13. “Co-Pay Spend” means the money that JJHCS intended to spend or spent on Copay Assistance, as used in JJHCS\_00230997.

14. “Document” means “document” and “electronically stored information” as defined in the Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document within the meaning of this term.

15. “Identify” means (a) with respect to persons, to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment; (b) with respect to documents, either (i) to give, to the extent known, the (A) type of document; (B) general subject matter; (C) date of the document; and (D) author(s), addressee(s) and recipient(s); or (ii) to produce the documents, together with sufficient identifying information sufficient to satisfy Federal Rule of Civil Procedure 33(d).

16. “Including” means including but not limited to.

17. “Janssen” means Janssen Biotech, Inc., Janssen Pharmaceuticals, Inc., Janssen Products, LP, and Actelion Pharmaceuticals U.S., Inc., as well as any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of Janssen Biotech, Inc., Janssen Pharmaceuticals, Inc., Janssen Products, LP, or Actelion Pharmaceuticals U.S., Inc.

18. “JJHCS” means Johnson & Johnson Health Care Systems Inc. and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of Johnson & Johnson Health Care Systems Inc., including Centocor, Inc., Ortho Biotech Products LP, McNeil Pharmaceutical, Ortho-McNeil Pharmaceutical, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Scios Inc., Janssen Biotech, Inc., Janssen Oncology, Inc., Janssen Research & Development, LLC, Janssen Pharmaceuticals, Inc., Janssen Products, LP, Actelion Pharmaceuticals U.S., Inc., Janssen BioPharma LLC, and Janssen Research & Development LLC. “JJHCS” also includes TrialCard to the extent that any J&J entity has legal control over its documents relating to its work for any J&J entity pursuant to a Master Services Agreement, per the Special Master’s order of May 28, 2023; and any other entity to the extent that any J&J entity has legal control over its documents relating to its work for any J&J entity pursuant a contract containing provisions similar to those in the Master Service Agreement discussing the May 28 order.

19. “JJHCS Hub Entity” means any entity retained or utilized by JJHCS to administer, in whole or in part, CarePath (including Lash Group and TrialCard), and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments,



agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf of such an entity.

20. “Lash Group” means The Lash Group, Inc. and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of The Lash Group, Inc.

21. “Maximizer” means copay maximizer service, including (a) any service provided by Pharmacy Benefit Managers or insurance companies, or any third party providing services to the same, to manage the cost of specialty drugs by preventing manufacturer copay assistance from counting towards a patient’s deductible and out-of-pocket maximum and under which members do not remain responsible for all or most of their plans’ copays, co-insurance requirements, and deductibles once copay assistance has been exhausted; and (b) any definition JJHCS ascribes to the term “copay maximizer.”

22. “May-Not-Use Provision” means the provision of CarePath’s terms and conditions that states that CarePath “may not be used with any other coupon, discount, prescription savings card, free trial or other offer.”

23. “Patient” means a natural person prescribed or eligible to be prescribed any Janssen Drug, whether or not they use CarePath or are a participant in a health plan advised by SaveOnSP.

24. “Person” means a natural person or legal entity including any business or governmental entity or association.

25. “Regarding” means (directly or indirectly, partially or wholly) about, alluding to, assessing, bearing upon, commenting upon, comprising, concerning, confirming, connected to, considering, containing, contradicting, dealing with, discussing, embodying, evaluating,

evidencing, identifying, in connection with, indicating, in respect of, involving, memorializing, mentioning, noting, pertaining to, probative of, proving, recording, referring to, reflecting, relating to, reporting on, reviewing, setting forth, showing, stating, suggesting, summarizing, supporting, touching upon a subject, or having been created, generated, or maintained in connection with or as a result of that subject.

26. “Request” means any of these Requests for Production.

27. “SaveOnSP” means Save On SP, LLC, and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of Save On SP, LLC.

28. “Specialty Drug” means any specialty pharmaceutical, medication, biologic, or other therapy treated as a pharmaceutical for purposes of health plan benefit coverage.

29. “TrialCard” means TrialCard Inc. and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of TrialCard Inc.

30. “You” and “Your” means JJHCS.

### **INSTRUCTIONS**

1. These Requests seek production of material in Your possession, custody, or control. Fed. R. Civ. P. 34(a)(1).

2. These Requests seek production of nonprivileged information. Fed. R. Civ. P. 26(b)(1).

3. These Requests seek production of material that is proportional to the needs of this case. Fed. R. Civ. P. 26(b)(1).

4. For each Request, either state that you will produce the requested material or state with specificity the grounds for objecting to the Request, including the reasons. Fed. R. Civ. P. 34(b)(2)(C).

5. If you object to all or part of a Request, state whether you are withholding any responsive material based on that objection. Fed. R. Civ. P. 34(b)(2)(C).

6. If you object to part of a Request, specify the part and state that you will produce documents responsive to the rest. Fed. R. Civ. P. 34(b)(2)(C).

7. If you withhold responsive information by claiming that the information is privileged or subject to protection as trial-preparation material, expressly make the claim and describe the nature of the information privileged or protected in a manner that, without revealing information itself privileged or protected, will enable SaveOnSP to assess the claim, Fed. R. Civ. P. 26(b)(5)(A)(ii), including by indicating whether any document exists regarding the information, requested and stating, to the extent the privilege is being asserted in connection with a claim or defense governed by the state law, the state privilege rule being invoked, Local Rule 34.1.

8. If a document responsive to a Request was once in your possession, custody, or control and has since been lost or destroyed, provide (a) a detailed description of the document; (b) the name of the author; (c) the names of all persons to whom the document was sent; (d) the date on which the document was prepared or initially received; (e) the date on which the document was lost or destroyed; and (f) if the document was destroyed, the manner of its destruction the reason for its destruction, the name of the person who requested or authorized its decision, and the name of the person who destroyed it.

9. Produce documents as they are kept in the usual course of business. Fed. R. Civ. P. 34(b)(E)(i). For each document, identify the file or location from which it was taken and the name, affiliation, and position of the producing custodian or non-custodial source.

10. Produce electronically stored information in the form and manner required by any agreed-upon or court-ordered protocols. In the absence of any such protocol at the time of production, consult SaveOnSP for further instruction.

11. Produce each document in its entirety, without abbreviation or redaction, including all attachments or materials attached thereto.

12. Produce all versions of each document that are not identical to the original document (including all drafts) whether due to handwritten notation, revisions, enclosures, attachments, underlining, highlighting, or otherwise.

13. These Requests are deemed continuing. If after responding to any Request you learn that your response is in some material respect incomplete or incorrect, supplement or correct your response in a timely manner. Fed. R. Civ. P. 26(e)(1)(A).

### **TIME PERIOD**

Unless otherwise specified, these Requests relate to the time period from and including April 1, 2016 through the present.

### **REQUESTS**

98. All Documents and Communications regarding [REDACTED]

[REDACTED]” mentioned in JJHCS\_00229086, [REDACTED]

99. All Documents and Communications regarding the “[REDACTED]

discussed in JJHCS\_00228430, [REDACTED]

[REDACTED].

100. Documents sufficient to show when and how JJHCS came to understand that the May-Not-Use Provision purportedly bars patients on Accumulators, Maximizers, or SaveOnSP-advised plans from participating in CarePath.

101. All Documents and Communications from before January 1, 2022 which reflect JJHCS's alleged understanding that the May-Not-Use Provision bars patients on Accumulators, Maximizers, or SaveOnSP-advised plans from participating in CarePath.

# Exhibit 2

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*Attorneys for Defendant Save On SP, LLC*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

JOHNSON & JOHNSON HEALTH CARE  
SYSTEMS INC.,

Plaintiff,

v.

SAVE ON SP, LLC,

Defendant.

Civil Action No. 22-2632 (JMV) (CLW)

**DEFENDANT'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF**

To: Jeffrey J. Greenbaum, Esq.  
SILLS CUMMIS & GROSS, P.C.  
One Riverfront Plaza  
Newark, New Jersey 07102  
973-643-7000

Adeel A. Mangi, Esq.  
Harry Sandick, Esq.  
George LoBiondo, Esq.  
PATTERSON BELKNAP WEBB  
& TYLER LLP  
1133 Avenue of the Americas  
New York, New

*Attorneys for Plaintiff Johnson & Johnson  
Health Care Systems Inc.*

**PLEASE TAKE NOTICE** that pursuant to Federal Rules of Civil Procedure 26 and 34, Defendant Save On SP, LLC (“SaveOnSP”) requests Plaintiff Johnson & Johnson Health Care Systems Inc. (“JJHCS”), to produce for inspection and copying the documents listed in these Requests, to the office of the undersigned within 30 days of being served or at a time and place mutually agreed by the parties or ordered by the Court.

**PLEASE TAKE FURTHER NOTICE** that this demand for production of documents shall be deemed continuing in nature so as to require supplemental responses if Plaintiff or Plaintiff’s counsel obtain or locate further or additional documents subsequent to the time Plaintiff’s responses are served.

Dated: November 11, 2022

By: /s/ Andrew R. Dunlap  
David Elsberg  
Andrew R. Dunlap  
Meredith Nelson  
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ewohlforth@gibbonslaw.com

*Attorneys for Defendant Save On SP, LLC*

### **DEFINITIONS**

1. The singular form of a word includes the plural, and vice versa.
2. Any tense of a verb includes all tenses.
3. Any natural person includes that person's agents, assigns, attorneys, employees, representatives, and successors.
4. Any entity other than a natural person includes (a) that entity's present and former agents, affiliates (foreign or domestic), assigns, attorneys, consultants, directors, divisions, employees, officers, parents, predecessors, representatives, servants, subsidiaries, and successors; (b) any person or entity, directly or indirectly, wholly or in part, associated with, controlled by, or owned by that entity; (c) and any other person or entity acting or purporting to act on behalf of (a) or (b).
5. "Action" means this litigation styled as "*Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC*" currently pending in the United States District Court for the District of New Jersey, No. 22-2632 (JMV) (CLW).
6. "Affordable Care Act" means the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119.
7. "All," "any," and "each" mean any and all.
8. "And" and "or" are construed both conjunctively and disjunctively.
9. "CarePath" means the Janssen copay assistance program marketed under the name CarePath that provides financial support services for patients using specialty drugs researched, developed, and marketed by the pharmaceutical companies of Johnson & Johnson, including Janssen (as defined herein).

10. “CarePath Care Coordinator” means any person or entity encompassed by that term as used on CarePath’s “Contact Us” webpage,<sup>1</sup> as well as any person responsible for communicating with patients who contact CarePath via an advertised help number (*e.g.*, 877-CarePath).

11. “Communication” means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.

12. “Complaint” means JJHCS’s May 4, 2022 Complaint [ECF No. 1] or any subsequently amended Complaint in this Action.

13. “Copay Accumulator Service” means (a) any service provided by Pharmacy Benefit Managers or insurance companies, or any third party providing services to the same, to manage the cost of specialty drugs by preventing manufacturer copay assistance from counting towards a patient’s deductible and out-of-pocket maximum and under which members remain responsible for all or most of their plans’ copays, co-insurance requirements, and deductibles once copay assistance has been exhausted; and (b) any definition JJHCS ascribes to the term “copay accumulator.”

14. “Copay Assistance” means any type of patient support that allows a drug manufacturer to pay all or some of a patient’s prescription drug cost for that manufacturer’s drug.

15. “Copay Maximizer Service” means (a) any service provided by Pharmacy Benefit Managers or insurance companies, or any third party providing services to the same, to manage the cost of specialty drugs by preventing manufacturer copay assistance from counting towards a patient’s deductible and out-of-pocket maximum and under which members do not remain responsible for all or most of their plans’ copays, co-insurance requirements, and deductibles once copay

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<sup>1</sup> See Contact Us, <https://www.janssencarepath.com/patient/contact-us> (last visited October 25, 2022).

assistance has been exhausted; and (b) any definition JJHCS ascribes to the term “copay maximizer.”

16. “Document” means “document” and “electronically stored information” as defined in the Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document within the meaning of this term.

17. “ESI” means “electronically stored information” as defined in the Federal Rules of Civil Procedure.

18. “Essential Health Benefit” means, in the context of prescription drug benefits at issue in this case, (a) a prescription drug benefit that satisfies the requirement for a plan to provide essential prescription drug benefits under the Affordable Care Act or that is treated as such by a plan;<sup>2</sup> and (b) any definition JJHCS ascribes to the term “essential health benefit” as used in the Complaint.

19. “Identify” means (a) with respect to persons, to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment; (b) with respect to documents, either (i) to give, to the extent known, the (A) type of document; (B) general subject matter; (C) date of the document; and (D) author(s), addressee(s) and recipient(s); or (ii) to produce the documents, together with sufficient identifying information sufficient to satisfy Federal Rule of Civil Procedure 33(d).

20. “Including” means including but not limited to.

21. “Janssen” means Janssen Biotech, Inc., Janssen Pharmaceuticals, Inc., Janssen Products, LP, and Actelion Pharmaceuticals U.S., Inc., as well as any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents,

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<sup>2</sup> 45 C.F.R. §§ 156.122, 156.115.

representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of Janssen Biotech, Inc., Janssen Pharmaceuticals, Inc., Janssen Products, LP, or Actelion Pharmaceuticals U.S., Inc.

22. “Janssen Drug” means any Specialty Drug manufactured or sold by Janssen from any time for which patients may receive copay assistance, including BALVERSA, DARZALEX, DARZALEX FASPRO, ERLEADA, IMBRUVICA, OPSUMIT, REMICADE, RYBREVENT, SIMPONI, STELARA, TRACLEER, TREMFYA, UPTRAVI, and ZYTIGA, as well as any other specialty drugs that JJHCS asserts are at issue in this Action.

23. “JJHCS’s Employee Health Plans” means any health plan offered by JJHCS or Janssen to its employees.

24. “JJHCS” means Johnson & Johnson Health Care Systems Inc. and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of Johnson & Johnson Health Care Systems Inc., including Centocor, Inc., Ortho Biotech Products LP, McNeil Pharmaceutical, Ortho-McNeil Pharmaceutical, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Scios Inc., Janssen Biotech, Inc., Janssen Oncology, Inc., Janssen Research & Development, LLC, Janssen Pharmaceuticals, Inc., Janssen Products, LP, Actelion Pharmaceuticals U.S., Inc., Janssen BioPharma LLC, and Janssen Research & Development LLC.

25. “JJHCS Access Group” means the team operating within and for JJHCS under this or a substantially similar name (*i.e.*, Access Group, Access Team, or Access Division).

26. “JJHCS Health Economics Group” means the team operating within and for JJHCS under this or a substantially similar name (*i.e.*, Health Economics Group, Health Economics Team, or Health Economics Division).

27. “JJHCS Hub Entity” means any entity retained or utilized by JJHCS to administer, in whole or in part, CarePath (including Lash Group and TrialCard), and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf of such an entity.

28. “JJHCS Outcome Group” means the team operating within and for JJHCS under this or a substantially similar name (*i.e.*, Outcome Group, Outcome Team, or Outcome Division).

29. “Lash Group” means The Lash Group, Inc. and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of The Lash Group, Inc.

30. “Non-Essential Health Benefits” means, in the context of prescription drug benefits at issue in this case, (a) any prescription drug benefit covered by a plan in excess of those necessary for a plan to satisfy the requirements for providing essential prescription drug health benefits under the Affordable Care Act<sup>3</sup> and designated by the plan as a non-essential health benefit; and (b) any definition JJHCS ascribes to the term “non-essential health benefits” as used in the Complaint.

31. “Parties” means “SaveOnSP” and “JJHCS.”

32. “Patient” means a natural person prescribed or eligible to be prescribed any Janssen Drug, whether or not they use CarePath or are a participant in a health plan advised by SaveOnSP.

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<sup>3</sup> See 45 C.F.R. §§ 156.122, 156.115.

33. “Person” means a natural person or legal entity including any business or governmental entity or association.

34. “Regarding” means (directly or indirectly, partially or wholly) about, alluding to, assessing, bearing upon, commenting upon, comprising, concerning, confirming, connected to, considering, containing, contradicting, dealing with, discussing, embodying, evaluating, evidencing, identifying, in connection with, indicating, in respect of, involving, memorializing, mentioning, noting, pertaining to, probative of, proving, recording, referring to, reflecting, relating to, reporting on, reviewing, setting forth, showing, stating, suggesting, summarizing, supporting, touching upon a subject, or having been created, generated, or maintained in connection with or as a result of that subject.

35. “Request” means any of these Requests for Production.

36. “SaveOnSP” means Save On SP, LLC, and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of Save On SP, LLC.

37. “SaveOnSP IPBC Video” means the IPBC and SaveOnSP training video created by Express Scripts as defined in Complaint ¶ 9.

38. “Specialty Drug” means any specialty pharmaceutical, medication, biologic, or other therapy treated as a pharmaceutical for purposes of health plan benefit coverage.

39. “Stelara” means the Janssen Drug sold under that name.

40. “Tremfya” means the Janssen Drug sold under that name.

41. “TrialCard” means TrialCard Inc. and any and all predecessors and successors in interest, assignees, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants, and all persons or entities acting or purporting to act on behalf or under the control of TrialCard Inc.

42. “You” and “Your” means JJHCS.

### **INSTRUCTIONS**

1. These Requests seek production of material in Your possession, custody, or control. Fed. R. Civ. P. 34(a)(1).

2. These Requests seek production of nonprivileged material. Fed. R. Civ. P. 26(b)(1).

3. These Requests seek production of material that is proportional to the needs of this case. Fed. R. Civ. P. 26(b)(1).

4. For each Request, either state that you will produce the requested material or state with specificity the grounds for objecting to the Request, including the reasons. Fed. R. Civ. P. 34(b)(2)(C).

5. If you object to all or part of a Request, state whether you are withholding any responsive material based on that objection. Fed. R. Civ. P. 34(b)(2)(C).

6. If you object to part of a Request, specify the part and state that you will produce documents responsive to the rest. Fed. R. Civ. P. 34(b)(2)(C).

7. If you withhold responsive information by claiming that the information is privileged or subject to protection as trial-preparation material, expressly make the claim and describe the nature of the information privileged or protected in a manner that, without revealing information itself privileged or protected, will enable SaveOnSP to assess the claim, Fed. R. Civ. P. 26(b)(5)(A)(ii), including by indicating whether any document exists regarding the information



requested and stating, to the extent the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked, Local Rule 34.1.

8. If a document responsive to a Request was once in your possession, custody, or control and has since been lost or destroyed, provide (a) a detailed description of the document; (b) the name of the author; (c) the names of all persons to whom the document was sent; (d) the date on which the document was prepared or initially received; (e) the date on which the document was lost or destroyed; and (f) if the document was destroyed, the manner of its destruction, the reason for its destruction, the name of the person who requested or authorized its destruction, and the name of the person who destroyed it.

9. Produce documents as they are kept in the usual course of business. Fed. R. Civ. P. 34(b)(E)(i). For each document, identify the file or location from which it was taken and the name, affiliation, and position of the producing custodian or non-custodial source.

10. Produce electronically stored information in the form and manner required by any agreed-upon or court-ordered protocols. In the absence of any such protocol at the time of production, consult SaveOnSP for further instruction.

11. Produce each document in its entirety, without abbreviation or redaction, including all attachments or materials attached thereto.

12. Produce all versions of each document that are not identical to the original document (including all drafts) whether due to handwritten notations, revisions, enclosures, attachments, underlining, highlighting, or otherwise.

13. These Requests are deemed continuing. If after responding to any Request you learn that your response is in some material respect incomplete or incorrect, supplement or correct your response in a timely manner. Fed. R. Civ. P. 26(e)(1)(A).

### **TIME PERIOD**

Unless otherwise specified, these Requests cover from and including January 1, 2017, through the present.

### **REQUESTS**

1. From January 1, 2009 through the present, Documents sufficient to show JJHCS's organizational structure, including organizational charts.
2. From January 1, 2009 through the present, Documents sufficient to show Janssen's organizational structure, including organizational charts.
3. From January 1, 2009 through the present, Documents sufficient to show the organizational structure of each JJHCS Hub Entity.
4. From January 1, 2009 through the present, Documents sufficient to show the organizational structure of any group or division within JJHCS, Janssen, or any JJHCS Hub Entity involved in developing, managing, marketing, or administering CarePath or any other copay assistance program offered for Janssen Drugs, and to identify their employees.
5. From January 1, 2009 through the present, Documents sufficient to show the organizational structure of JJHCS's Health Economics, Access, and Outcome Groups and to identify employees working in those groups.
6. From January 1, 2009 through the present, Documents sufficient to show the organizational structure of the drug product team for each Janssen Drug, and to identify employees working on those teams.
7. From January 1, 2009 through the present, documents sufficient to identify all natural persons with decisionmaking authority over the sale or marketing of Janssen Drugs.
8. All Documents and Communications with or regarding SaveOnSP.

9. All Communications by JJHCS or Janssen with any Patient regarding SaveOnSP, including any Documents regarding those Communications.

10. All Documents and Communications regarding any presentation, document, or information regarding SaveOnSP referenced in the Complaint, including the “SaveOnSP IPBC Video” and the materials referenced in Complaint ¶¶ 82-88.

11. From January 1, 2009 through the present, all Documents and Communications regarding the development, management, and marketing of CarePath or any other copay assistance program offered for Janssen Drugs, including Documents and Communications regarding JJHCS’s allegations in Complaint ¶¶ 6-7, 36-49.

12. From January 1, 2009 through the present, all Documents and Communications regarding CarePath’s terms and conditions, including Documents and Communications regarding (a) JJHCS’s allegations in Complaint ¶¶ 3, 8, 18-26, 102-103, 108; (b) all CarePath terms and conditions for each Janssen Drug; (c) JJHCS’s decision to revise any of its CarePath terms and conditions for any Janssen Drug; and (d) JJHCS’s understanding of the term “offer” or “health plan” as used in CarePath’s terms and conditions.

13. From January 1, 2009 through the present, all Documents and Communications regarding CarePath’s requirement that Patients enrolled in CarePath make any payments towards Janssen Drugs, including Documents and Communications regarding JJHCS’s basis for setting the amounts of those payments and JJHCS’s allegations in Complaint ¶¶ 48-49, 70, 89.

14. From January 1, 2015 through the present, all Documents and Communications regarding JJHCS’s or any JJHCS Hub Entity’s understanding of commercial health plans’ ability to designate specialty drugs as Essential Health Benefits or Non-Essential Health Benefits under

the Affordable Care Act and its regulations, including Documents and Communications regarding JJHCS's allegations in Complaint ¶¶ 9-10, 43, 53-59, 71, 79.

15. All Documents and Communications regarding SaveOnSP's communications with Patients regarding CarePath, including Documents and Communications regarding JJHCS's allegations in Complaint ¶¶ 60-67, 109.

16. All Documents and Communications regarding SaveOnSP's provision of services to qualified high deductible or health savings account plans, including Documents and Communications regarding JJHCS's allegations in Complaint ¶ 72.

17. All Documents and Communications regarding JJHCS's payment of copay assistance funds to or on behalf of Patients enrolled in qualified high deductible or health savings account plans.

18. All Documents and Communications regarding any allegedly misleading or confusing communications between SaveOnSP and Patients, including Documents and Communications regarding JJHCS's allegations in Complaint ¶¶ 13, 75-77, 85-88.

19. All Documents and Communications regarding any alleged stress or confusion caused by SaveOnSP to any member of the public, including Documents and Communications regarding JJHCS's allegations in Complaint ¶ 114.

20. All Documents and Communications regarding any publicly distributed material (including, for example, articles, op-eds, white papers, and online postings) regarding SaveOnSP, Copay Accumulator Services, or Copay Maximizer Services, including Documents and Communications regarding JJHCS's, Janssen's, or any JJHCS Hub Entity's direct or indirect involvement with such material and JJHCS's, Janssen's, or any JJHCS Hub Entity's direct or indirect funding of the authors, publishers, or distributors of such material.

21. All Documents and Communications regarding any advocacy to or communication with any governmental or regulatory body regarding SaveOnSP, Copay Accumulator Services, or Copay Maximizer Services.

22. All Documents and Communications regarding any alleged harm caused by SaveOnSP to any Patient by allegedly making their healthcare more expensive, including Documents and Communications regarding JJHCS's allegations in Complaint ¶ 114.

23. All Documents and Communications regarding how SaveOnSP directly or indirectly affects or threatens the financial viability of CarePath, including Documents and Communications regarding JJHCS's allegations in Complaint ¶ 114.

24. All Documents and Communications regarding how SaveOnSP directly or indirectly affects or threatens the financial viability of any Copay Assistance Program other than CarePath, including Documents and Communications regarding JJHCS's allegations in Complaint ¶ 114.

25. All Documents and Communications regarding any alleged harm caused by SaveOnSP to JJHCS, including Documents and Communications regarding JJHCS's allegations in Complaint ¶ 110, 115.

26. All Documents and Communications regarding JJHCS's, Janssen's, or any JJHCS Hub Entity's payment of any Patient's costs, including those that accumulate towards the Patient's deductible or out-of-pocket maximum.

27. All Documents and Communications regarding the "internal JJHCS data" discussed in Complaint ¶¶ 92-101, including the complete databases from which that data was drawn.

28. From January 1, 2009 through the present, for each Janssen Drug for each year, Documents sufficient to show:

- a. all Patients receiving the Janssen Drug;
- b. the number of fills of the Janssen Drug received by each such Patient;
- c. the dosage of the Janssen Drug received by each such Patient for each fill;
- d. the projected number of Patients, average number of fills, and average dosage for the Janssen Drug;
- e. the cost to manufacture the Janssen Drug;
- f. the sales and marketing budget for the Janssen Drug;
- g. the price of the Janssen Drug;
- h. the revenue received by JJHCS from the Janssen Drug;
- i. all Patients enrolled in the CarePath program for the Janssen Drug;
- j. the dates on which each Patient was enrolled in CarePath;
- k. the amounts of copay assistance funds that JJHCS offered to each Patient enrolled in CarePath;
- l. the Janssen Drugs for which each Patient enrolled in CarePath received copay assistance;
- m. all copay assistance payments that JJHCS made to or on behalf each Patient enrolled in CarePath; and

29. From January 1, 2009 through the present, for each Janssen Drug for each year, all Documents and Communications regarding:

- a. JJHCS's determination of the amounts of copay assistance funds that JJHCS offered to Patients enrolled in CarePath, including the determination of the maximum program benefit per calendar year for the Janssen Drug;

- b. JJHCS's budget for CarePath, including the sales and marketing budget;
- c. JJHCS's actual and projected annual costs for CarePath;
- d. JJHCS's use of or accounting for unused CarePath funds;
- e. the impact of the Affordable Care Act on JJHCS's CarePath budget or funding, including the impact of laws and regulations regarding out-of-pocket maximums;
- f. JJHCS's and Janssen's revenue and revenue projections from fills by Patients enrolled in CarePath;
- g. the impact of CarePath on Janssen's sales of any Janssen Drug;
- h. the impact of CarePath on JJHCS's or Janssen's gross to net calculations;
- i. JJHCS's or Janssen's actual and projected return on investment for CarePath; and
- j. any analysis of the adherence rates of Patients enrolled in CarePath to Janssen Drugs, including such Patients enrolled in plans advised by Save-OnSP.

30. From January 1, 2009 through the present, for each year for each Janssen Drug, all Documents and Communications regarding the basis for Janssen's decision to raise or lower the price of the Janssen Drug, including labor or manufacturing costs or the increase in efficacy of the Janssen Drug.

31. All Documents and Communications regarding JJHCS's attempts to limit or eliminate the amount of CarePath copay assistance funds available to Patients using Stelara or Tremfya based on whether the Patients' plans allegedly reduce or eliminate Patients' out-of-pocket costs, including Documents and Communications regarding JJHCS's attempts to limit or eliminate the

availability of CarePath copay assistance funds available to Patients enrolled in health plans advised by SaveOnSP.

32. All Documents and Communications regarding any offer by JJHCS to provide to any Patient any CarePath funds greater than the amounts that JJHCS generally offers to CarePath Patients or to waive any limitation on or elimination of the amount of CarePath copay assistance funds available to a Patient.

33. All Documents and Communications regarding JJHCS's attempts to identify health plans advised by SaveOnSP or Patients enrolled in such plans.

34. From any time, all Documents and Communications regarding JJHCS's or Janssen's negotiations or agreements regarding the potential use of SaveOnSP's services, or the services of any Copay Maximizer Service or Copay Accumulator Service, for JJHCS's Employee Health Plans, including JJHCS's abandonment of those negotiations or agreements.

35. Documents sufficient to identify all JJHCS Hub Entities and CarePath Care Coordinators.

36. From January 1, 2009 through the present, Documents sufficient to show the economic terms of JJHCS's retention of or agreements with any JJHCS Hub Entity or CarePath Care Coordinator regarding CarePath, including any assessment of the fair market value of those services.

37. From January 1, 2009 through the present, documents sufficient to show the percentage of Patients who enroll in CarePath after being contacted by JJHCS, Janssen, any JJHCS Hub Entity, or any other third party authorized to advertise or market CarePath or Janssen Drugs.



38. From January 1, 2009 through the present, all Documents and Communications received by JJHCS from any JJHCS Hub Entity or sent by JJHCS to any JJHCS Hub Entity regarding SaveOnSP or CarePath.

39. All Documents and Communications received by JJHCS from any CarePath Care Coordinator regarding SaveOnSP.

40. All Communications by any JJHCS Hub Entity or CarePath Care Coordinator with any Patient regarding SaveOnSP, including any Documents regarding those Communications and talk tracks or scripts prepared for use during those Communications.

41. From January 1, 2015 through the present, all Documents and Communications relating to Copay Accumulator Services and Copay Maximizer Services and their effect on JJHCS's return on investment for copay assistance dollars.

42. From January 1, 2015 through the present, all Documents and Communications relating to JJHCS's or any JJHCS Hub Entity's understanding of the terms "copay accumulator" and "copay maximizer."

43. All Documents and Communications concerning non-medical switching by participants of plans that implement SaveOnSP's services, a Copay Accumulator Service, or a Copay Maximizer Service.

44. To the extent not requested above, Documents and Communications of any JJHCS Hub Entity or CarePath Care Coordinator regarding the topics of all Requests listed above.

45. JJHCS's, Janssen's, any JJHCS Hub Entity's, and any CarePath Care Coordinator's document retention policies.

46. Complete data dictionaries for any data that You produce.

47. From any time, all Documents and Communications regarding this Action provided to you by any person or entity other than SaveOnSP, including in response to subpoenas served in this Action.

48. To the extent not requested above, from any time, all Documents and Communications upon which you may rely in this Action.

**EXHIBITS 3-4**  
**CONFIDENTIAL – FILED UNDER SEAL**

# Exhibit 5

**Long, Julia (x2878)**

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**From:** Long, Julia (x2878)  
**Sent:** Friday, May 31, 2024 5:35 PM  
**To:** pselendy@selendygay.com; adunlap@selendygay.com; mnelson@selendygay.com; esnow@selendygay.com; hmiles@selendygay.com; mnussbaum@selendygay.com; ewohlforth@rc.com; sgalli@rc.com; kkatchen@rc.com  
**Cc:** Mangi, Adeel A. (x2563); Sandick, Harry (x2723); LoBiondo, George (x2008); Arrow, Sara (x2031); ~jgreenbaum@sillscummis.com; ~klieb@sillscummis.com; \_cg J&J-SaveOn  
**Subject:** JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-JKS-CLW)  
**Attachments:** 2024.05.31 Johnson and Leger Search Terms.pdf

Counsel:

Consistent with JJHCS's reply brief in further support of its motion to compel the addition of Jessica Johnson and Kelsey Leger as custodians, enclosed please find JJHCS's counterproposal on search terms for these custodians. Please provide hit counts for the original search terms, SaveOnSP's counterproposal, and JJHCS's current proposal (with and without families) by June 4.

Best,  
Julia

**Julia Long**  
She | Her | Hers  
Associate

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**Search Term Proposal**

Custodians: Jessica Johnson and Kelsey Leger  
Time Period: April 1, 2016 to November 7, 2023

<b>Term</b>	<b>JJHCS Initial Proposal</b>	<b>SaveOnSP Response</b>	<b>JJHCS Response</b>
1.	((“don’t” OR “not” OR allowed OR never OR permit OR “can’t” OR cannot) w/15 (mention OR disclose OR say OR inform* OR divulge)) w/15 (SaveOn OR SaveOnSP OR SOSP OR “Save On” OR manufacturer* OR mfg* OR program)	((“don’t” OR “not” OR allowed OR never OR permit OR “can’t” OR cannot) w/5 (mention OR disclose OR say OR inform* OR divulge)) w/10 (SaveOn OR SaveOnSP OR SOSP OR “Save On” <del>OR manufacturer* OR mfg* OR program</del> )	((“don’t” OR “not” OR allowed OR never OR permit OR “can’t” OR cannot) w/5 (mention OR disclose OR say OR inform* OR divulge)) w/10 (SaveOn OR SaveOnSP OR SOSP OR “Save On” <del>OR manufacturer* OR mfg*</del> )  <b>SaveOnSP’s proposal would eliminate discussions where employees are instructed to, for example, “never mention” a topic (including but not limited to SaveOnSP enrollment) to “manufacturers.”</b>
2.	((two OR 2) w/2 card) AND (solution OR Stelara OR Tremfya)	Accepted	N/A
3.	(avoid* OR conceal*) AND (co-insurance OR variable OR copay OR “co-pay”)	(avoid* OR conceal*) <del>AND</del> w/15 (co-insurance OR variable OR copay OR “co-pay”)	(avoid* OR conceal*) w/50 (co-insurance OR variable OR copay OR “co-pay”)  <b>SaveOnSP’s narrowing is too tight, evidenced by the term resulting in only 45 reviewable documents.</b>
4.	(Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi) w/25 (maximizer* OR accumulator* OR reduce* OR modif* OR change*)	(Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi) w/15 ((maximizer* OR accumulator*) <del>OR AND</del> (reduce* OR modif* OR change*))	(Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi) w/15 (( <del>maximizer* OR accumulator*</del> ) <del>AND</del> (reduce* OR modif* OR change*))

Term	JJHCS Initial Proposal	SaveOnSP Response	JJHCS Response
			<b>SaveOnSP's proposed limitation would only pick up documents with explicit references to accumulators or maximizers. This is too extreme, evidenced by SaveOnSP's position that its term results in only 3 reviewable documents.</b>
5.	(counter* OR strateg* OR "course correct" OR "bypass" OR respon* OR solution OR solv*) w/25 (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi)	(counter* OR strateg* OR "course correct" OR "bypass" OR <del>OR respon*</del> OR solution OR solv*) w/15 (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi)	(counter* OR strateg* OR "course correct" OR "bypass" OR <del>OR respon*</del> OR solution OR solv*) w/20 (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi)  <b>SaveOnSP's term also would eliminate discussions of "responses" to "manufacturers' changes," which SaveOnSP concedes is the purpose of this term. SaveOnSP's proximity limiter also is too narrow, evidenced by SaveOnSP's position that its term results in only 2 reviewable documents.</b>
6.	(detect* OR evade* OR avoid* OR hide OR conceal*) AND (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi)	(detect* OR evade* OR avoid* OR hide OR conceal*) <del>AND</del> w/15 (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi)	(detect* OR evade* OR avoid* OR hide OR conceal*) w/25 (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi)  <b>SaveOnSP's narrowing is too tight, evidenced by the term resulting in only 35 reviewable documents.</b>
7.	(detect* OR evade* OR avoid* OR hide OR conceal*) w/15 manufacturer*	Accepted	N/A

Term	JJHCS Initial Proposal	SaveOnSP Response	JJHCS Response
8.	(detect* OR evade* OR hide OR conceal*) AND (co-insurance OR coinsurance OR variable)	Accepted	N/A
9.	(dummy OR fake OR false* OR mock OR lie* OR lying OR truth) AND enroll*	(dummy OR fake OR false* OR mock OR lie* OR lying OR truth) <del>AND</del> w/15 enroll*	(dummy OR fake OR false* OR mock OR lie* OR lying OR truth) w/25 enroll*  <b>SaveOnSP's narrow proximity limiter would not capture documents, for example, containing a title or header on "Manufacturer Enrollments" and a list of instructions, including, for example, to use a "fake" or "false" name.</b>
10.	(FirstView OR "First View") AND (credit w/2 card)	Accepted	N/A
11.	(FirstView OR "First View") w/10 card	Accepted	N/A
12.	(lie* OR liar* OR lying OR fib* OR misrepresent* OR fake* OR fals* OR "made-up" OR mock OR dummy) w/50 (J&J OR JnJ OR Johnson OR Janssen OR Jannsen OR Jannssen OR JJHCS OR JHCS OR JHS OR HCS OR CPA OR "copay assistance" OR "co-pay assistance" OR "CarePath" OR "JCP")	(lie* OR liar* OR lying OR fib* OR misrepresent* OR fake* OR fals* OR "made-up" OR mock OR dummy) w/20 (J&J OR JnJ <del>OR Johnson</del> OR Janssen OR Jannsen OR Jannssen OR JJHCS OR JHCS OR JHS OR HCS OR <del>CPA</del> OR "copay assistance" OR "co-pay assistance" OR "CarePath" OR "JCP")	(lie* OR liar* OR lying OR fib* OR misrepresent* OR fake* OR fals* OR "made-up" OR mock OR dummy) w/20 (J&J OR JnJ OR Janssen OR Jannsen OR Jannssen OR JJHCS OR JHCS OR JHS OR HCS OR <del>CPA</del> OR "copay assistance" OR "co-pay assistance" OR "CarePath" OR "JCP")  <b>JJHCS agrees to drop the word "Johnson" from the term and to use SaveOnSP's proposed proximity limiter, but does not agree to drop the term "CPA." While SaveOnSP argues that "CPA" is a generic accounting term, "CPA" is also used to describe co-pay</b>



Term	JJHCS Initial Proposal	SaveOnSP Response	JJHCS Response
			<b>assistance (at the heart of this case) and with a tight proximity limiter to “lie” or “misrepresent” is unlikely to yield false hits on “generic accounting documents.”</b>
13.	manufacturer* w/10 (maximizer* OR accumulator*)	Accepted	N/A
14.	(call* OR contract* OR speak OR spoke OR talk* OR phone* OR chat* OR (obtain* w/2 info*)) w/25 (J&J OR JNJ OR Johnson OR Janssen OR Jannsen OR Jannssen OR JJHCS OR JHCS OR JHS OR HCS OR CPA OR “copay assistance” OR “co-pay assistance” OR CarePath OR “JCP”)	SaveOnSP declined to provide a counterproposal.	<p>(call* OR contract* OR speak OR spoke OR talk* OR phone* OR chat* OR (obtain* w/2 info*)) w/10 (J&amp;J OR JNJ OR <del>Johnson</del> OR Janssen OR Jannsen OR Jannssen OR JJHCS OR JHCS OR JHS OR HCS OR CPA OR “copay assistance” OR “co-pay assistance” OR CarePath OR “JCP”) AND (lie* OR liar* OR lying OR fib* OR misrepresent* OR fake* OR fals* OR “made-up” OR mock OR dummy)</p> <p><b>In its opposition, SaveOnSP argued that this term was overbroad because it did not contain a connector bring in documents about “false” statements to JJHCS and that the term “Johnson” would bring in additional documents that Jessica Johnson happened to receive. Accordingly, JJHCS proposes a narrower limiter between “call” and variations of “J&amp;J” with a further limiter for deceptive conduct (i.e., “lie*” OR “fals*”). For the reasons stated above, JJHCS declines to drop the term “CPA” from its request.</b></p>

Term	JJHCS Initial Proposal	SaveOnSP Response	JJHCS Response
15.	(call* OR contract* OR speak OR spoke OR talk* OR phone* OR chat* OR (obtain* w/2 info*)) w/25 (J&J OR JNJ OR Johnson OR Janssen OR Jannsen OR Jannssen OR JJHCS OR JHCS OR JHS OR HCS OR CarePath OR “JCP”)	SaveOnSP declined to provide a counterproposal.	JJHCS agrees to drop this term, subject to agreement on Term 14.
16.	(call* OR contract* OR speak OR spoke OR talk* OR phone* OR chat*) w/25 (J&J OR JNJ OR Johnson OR Janssen OR Jannsen OR Jannssen OR JJHCS OR JHCS OR JHS OR HCS OR CPA OR “copay assistance” OR “co-pay assistance” OR CarePath OR “JCP”)	SaveOnSP declined to provide a counterproposal.	JJHCS agrees to drop this term, subject to agreement on Term 14.
17.	(manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi) w/25 (maximizer* OR accumulator* OR reduce* OR modif*)	SaveOnSP declined to provide a counterproposal.	<p>(manufacturer OR mfgr* <del>OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi</del>) w/15 (maximizer* OR accumulator* OR SaveOn OR SaveOnSP OR SOSp OR “Save On”) AND (reduce* OR modif* OR chang*)</p> <p><b>JJHCS proposes modifying this term to pull in one word from Term 18 while adding proximity limiters to capture instances where Johnson or Leger discussed “manufacturers” making changes to co-pay assistance programs, including “reducing” benefits in light of “maximizers,” “accumulators,” or “SaveOnSP.”</b></p>

Term	JJHCS Initial Proposal	SaveOnSP Response	JJHCS Response
18.	(manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi) w/25 (maximizer* OR accumulator* OR modif* OR change*)	SaveOnSP declined to provide a counterproposal.	JJHCS agrees to drop this term, subject to agreement on Term 17.

# Exhibit 6



August 7, 2024

Julia Long  
(212) 336-2878

**VIA EMAIL**

Elizabeth H. Snow, Esq.  
Selendy Gay, PLLC  
1290 Avenue of the Americas  
New York, NY 10104

**Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC,*  
2:23-cv-02632 (JKS) (CLW)**

Dear Elizabeth:

We write in response to SaveOnSP's August 1, 2024 letter and further to JJHCS's July 31, 2024 responses and objections to SaveOnSP's Tenth Set of Requests for Production (the "R&Os") and JJHCS's May 24, 2024, June 14, 2024, and July 3, 2024 letters concerning the scope of JJHCS's production obligations for terms and conditions issues.

In your letter, you repeat Request No. 100, which "seeks documents sufficient to show when and how [JJHCS] came to believe that the May-Not-Use provision purportedly bars patients on accumulators, maximizers, or SaveOn-advised plans," and Request No. 101, which "seeks all documents and communications before January 1, 2022 that reflect [JJHCS's] alleged understanding that the May-Not-Use Provision bars patients on accumulators, maximizers, or SaveOn-advised plans." Aug. 1, 2024 Ltr. from E. Snow to J. Long at 1.

As detailed in our July 31, 2024 R&Os, and in our prior correspondence, Request Nos. 100 and 101 are duplicative of Request Nos. 8, 12, 51, and 52. As you know, JJHCS also already has produced non-privileged, responsive documents concerning the "[m]eaning" of the "May-Not-Use Provision" for the period April 1, 2016 to November 7, 2023—as well as documents dating back to January 1, 2009 concerning the drafting of the terms and conditions for CarePath's predecessor programs. June 14, 2024 Ltr. from J. Long to E. Snow at 1. In addition to document production specific to the "meaning" of the terms and conditions, in response to Request No. 8, JJHCS has produced non-privileged documents "with or regarding SaveOnSP" from more than twenty custodians, including Scott White and Blasine Penkowski. *Id.* at 2.

Elizabeth H. Snow, Esq.  
August 7, 2024  
Page 2

SaveOnSP nonetheless requests an additional search term be run over the custodial files of twenty custodians<sup>1</sup>—including two apex custodians—from April 1, 2016 to November 7, 2023. SaveOnSP’s proposed term is overbroad, particularly in light of Judge Wolfson’s admonition against “w/50” limiters, and in light of the narrow band of documents SaveOnSP seeks from “before January 1, 2022.” On the proximity limiter, to the extent such documents are not captured by the parties’ previously agreed-upon search terms, the words “accumulat[or]” or “maximiz[er]” are much likely to appear in tight proximity to the terms variations of the term “violat[e]” or “prohibit[]” if used in the context SaveOnSP suggests (e.g., “maximizers” are “prohibited” under the “other offer” provision).

JJHCS is prepared to rest on its R&Os. However, in an effort to reach compromise, and subject to SaveOnSP’s agreement that this resolves the parties’ dispute, JJHCS is prepared to run its counterproposal over the files of the eighteen non-apex custodians<sup>2</sup> for the time period April 1, 2016 to November 7, 2023. JJHCS will not run its counterproposal over the custodial files of Scott White and Blasine Penkowski in light of Judge Wolfson’s ruling that apex custodians would be subject to “limited search terms.” Jan. 24, 2024 Tr. at 128:14–25 (emphasizing that the search terms applicable to apex custodians “are going to be limited search terms. I do understand they are high level executives”). Please advise whether SaveOnSP is prepared to accept this compromise proposal.

SaveOnSP’s Proposal	JJHCS’s Proposal
((violat* OR bar* OR prohibit* OR breach* OR preclude* OR allow* OR permit*) w/50 (accumulat* OR maximiz*)) w/50 (“other offer*” OR coupon* OR discount* OR “savings card*” OR “free trial*”)	((violat* OR bar* OR prohibit* OR breach* OR preclude* OR allow* OR permit*) w/25 (accumulat* OR maximiz*)) w/25 (“other offer*” OR coupon* OR discount* OR “savings card*” OR “free trial*”)
<b>606 documents (family inclusive)<sup>3</sup></b>	<b>176 documents (family inclusive)</b>

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<sup>1</sup> SaveOnSP requests that JJHCS add this term for the following custodians: Karen Lade, Lindsey Anderson, Spilios Asimakopoulos, John Franz, Evelyn Hall, Brandon Jeffcoat, John King, Jeremy Mann, Katie Mazuk, Silviya McCool, Hattie McKelvey, Adrienne Minecci, Lauren Pennington, William Robinson III, Nidhi Saxena, Heather Schoenly, Carol Scholz, and Jasmeet Singh, as well as apex custodians Blasine Penkowski and Scott White.

<sup>2</sup> These custodians are: Karen Lade, Lindsey Anderson, Spilios Asimakopoulos, John Franz, Evelyn Hall, Brandon Jeffcoat, John King, Jeremy Mann, Katie Mazuk, Silviya McCool, Hattie McKelvey, Adrienne Minecci, Lauren Pennington, William Robinson III, Nidhi Saxena, Heather Schoenly, Carol Scholz, and Jasmeet Singh.

<sup>3</sup> SaveOnSP’s proposal would require the review of 606 documents from non-apex custodians (family inclusive) and an additional 507 documents from apex custodians (family inclusive).

Elizabeth H. Snow, Esq.  
August 7, 2024  
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We remain available to meet and confer.

Very truly yours,

/s/ Julia Long  
Julia Long

# Exhibit 7



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August 23, 2024

**Via E-mail**

Julia Long

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**Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC* (Case No. 2:22-cv-02632-JKS-CLW)**

Dear Julia,

SaveOn writes in partial response to J&J's August 15, 2024 letter to propose search terms for the custodians that J&J agreed to add. If J&J objects to any of the requested search terms on the basis of burden, please provide hit counts for each term.

**I. Sylvia Shubert**

As SaveOn established in its July 19, 2024 letter, Shubert worked on the [REDACTED], see JJHCS\_00142693, as well as [REDACTED]. See JJHCS\_00026527. Shubert worked with multiple relevant third parties including [REDACTED], see JJHCS\_00198023, [REDACTED], see JJHCS\_00038577, [REDACTED], see JJHCS\_00254065, [REDACTED], see JJHCS\_00228204, and [REDACTED], see JJHCS\_00236787. Additional documents show that [REDACTED]. See JJHCS\_00198023.

Based on that work, SaveOn proposes that J&J run the CAP terms contained in Exhibit 1 over her custodial files, as well as the following terms from April 1, 2016 to November 7, 2023, unless otherwise noted:

- (Fein OR Pembroke OR Adam OR "Drug Channels") AND afein@drugchannels.net AND (SaveOnSP OR accumulat\* OR maximiz\*)

- Archbow w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable w/5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Archbow w/50 “other offer”
- Avalere w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable w/5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Avalere w/50 “other offer”
- IQVIA w/15 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR “adjustment program”)
- (TC OR TrialCard OR “Trial Card”) w/50 identif\*
- (TC OR TrialCard OR “Trial Card”) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)
- (essential OR nonessential OR non-essential OR “non essential”) w/50 (“Affordable Care Act” OR ACA OR Obamacare)
- “other offer” w/5 (accumulat\* OR maximiz\* OR “health plan\*” OR in-sur\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial\*”)

## II. Jennifer Goldsack

As SaveOn established in its July 19, 2024 letter, Goldsack worked on the [REDACTED]. See JJHCS\_00142600. She continued her efforts with C [REDACTED]. See JJHCS\_00107732. Goldsack engaged with multiple relevant third parties including [REDACTED], see JJHCS\_00228112, [REDACTED], see JJHCS\_00162699, JJHCS\_00168152, [REDACTED], see JJHCS\_00252920, [REDACTED], see JJHCS\_00229129, [REDACTED], see JJHCS\_00084220.

Based on that work, SaveOn proposes that J&J run the CAP terms contained in Exhibit 1 over her custodial files, and the following terms from April 1, 2016 to November 7, 2023, unless otherwise noted:

- “CAP 2023” OR “CAP 23” OR “CAP ’23”
- (TC OR TrialCard OR “Trial Card”) w/50 identif\*
- (TC OR TrialCard OR “Trial Card”) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)

- Avalere w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable /5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Avalere w/50 “other offer”
- IQVIA w/15 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR “adjustment program”)
- Deloitte w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable /5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- “other offer” w/5 (accumulat\* OR maximiz\* OR “health plan\*” OR in-sur\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial”)

### III. Michelle Barnard

As SaveOn established in its July 19, 2024 letter, Barnard worked on the [REDACTED]. See JHCS\_00238654. In that role, Barnard worked to [REDACTED]. See JHCS\_00210440 at -443. Barnard continued working on [REDACTED]. See JHCS\_00033653. Barnard also gathered information about [REDACTED]. See JHCS\_00181908. Additional documents show that Barnard [REDACTED], see JHCS\_00146042, [REDACTED], see JHCS\_00252920, [REDACTED], see JHCS\_00003033, and [REDACTED], see JHCS\_00181908.

Based on that work, SaveOn proposes that J&J run the CAP terms contained in Exhibit 1 over her custodial files, and the following terms from April 1, 2016 to November 7, 2023, unless otherwise noted:

- “CAP 2023” OR “CAP 23” OR “CAP ’23”
- “Tiger Team” w/50 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR “adjustment program”)
- IQVIA w/15 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR “adjustment program”)
- Avalere w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable w/5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Avalere w/50 “other offer”

- (TC OR TrialCard OR “Trial Card”) w/50 identif\*
- (TC OR TrialCard OR “Trial Card”) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)
- (Fein OR Pembroke OR Adam OR “Drug Channels”) AND afein@drugchannels.net AND (SaveOnSP OR accumulat\* OR maximiz\*)
- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya OR Skyrizi) w/50 (CarePath OR “Care Path” OR CP OR JCP OR “WithMe”)
  - Time Period: January 1, 2021 to November 7, 2023.
- (STELARA\* OR TREMFYA\* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
  - Time Period: January 1, 2021 to November 7, 2023.
- “other offer” w/5 (accumulat\* OR maximiz\* OR “health plan\*” OR insur\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial”)

#### IV. Cherilyn Nichols

As SaveOn established in its July 19, 2024 letter, Nichols worked on the [REDACTED]. See JJHCS\_00243124; JJHCS\_00035007. In that role, Nichols worked to [REDACTED]. See JJHCS\_00210440 at -443. She also shared information about how [REDACTED], see JJHCS\_00119568, and [REDACTED], see JJHCS\_00140327. Nichols also shared research about [REDACTED]. See JJHCS\_00034866. Documents show that Nichols [REDACTED], see JJHCS\_00145765, [REDACTED], see JJHCS\_00140327, [REDACTED], see JJHCS\_00226821, [REDACTED], see JJHCS\_00272475, [REDACTED], see JJHCS\_00034866, [REDACTED], see JJHCS\_00243124. Nichols also [REDACTED].  
1. See, e.g., JJHCS\_00034866.

Based on that work, SaveOn proposes that J&J run the CAP terms contained in Exhibit 1 over her custodial files, and the following terms from April 1, 2016 to November 7, 2023, unless otherwise noted:

- (“Drug Channel\*” OR ZS OR Sundial OR SunDial OR “Sun Dial”) w/50 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR “adjustment program” OR diversion OR divert)
- (MR OR market w/3 (research OR insight OR survey OR intellig\*)) w/50 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR “adjustment program” OR diversion OR divert)
- Archbow w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable w/5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Archbow w/50 “other offer”
- Avalere w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable /5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Avalere w/50 “other offer”
- IQVIA w/15 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR “adjustment program”)
- (TC OR TrialCard OR “Trial Card”) w/50 identif\*
- (TC OR TrialCard OR “Trial Card”) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)
- (RIS OR RISRx) /50 identif\*
- (RIS OR RISRx) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)
- (Fein OR Pembroke OR Adam OR “Drug Channels”) AND afein@drugchannels.net AND (SaveOnSP OR accumulat\* OR maximiz\*)
- “CAP 2023” OR “CAP 23” OR “CAP ’23”
- “Tiger Team” w/50 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR “adjustment program”)
- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya OR Skyrizi) w/50 (CarePath OR “Care Path” OR CP OR JCP OR “WithMe”)
  - Time Period: January 1, 2021 through November 7, 2023.
- (STELARA\* OR TREMFYA\* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)

- Time Period: January 1, 2021 to November 7, 2023.
- ((additional OR more OR number\* OR quantit\* OR greater OR impact OR effect OR frequency) w/3 (patient\* OR sales OR fill\* OR lives)) w/20 (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR accumulator\* OR maximizer\*)
- adher\* w/20 (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR accumulator\* OR maximizer\*)
- ((max\* w/15 benefit\*) w/50 (chang\* OR increas\* OR decreas\*)) AND (\$20,000 OR \$20K OR 20k)
- “other offer” w/5 (accumulat\* OR maximiz\* OR “health plan\*” OR in-sur\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial”\*)

**Pinal Shah.** As SaveOn established in its July 19, 2024 letter, Shah worked on [REDACTED]. See JJHCS\_00259949. Shah worked on J [REDACTED], see JJHCS\_00182292, and [REDACTED], see JJHCS\_00259737. She was included in [REDACTED]. See JJHCS\_00258386. Shah worked with [REDACTED], see JJHCS\_00274645, [REDACTED], see JJHCS\_00259860, and [REDACTED], see JJHCS\_00257817.

Based on that work, SaveOn proposes that J&J run the CAP terms contained in Exhibit 1 over her custodial files, and the following terms from April 1, 2016 to November 7, 2023, unless otherwise noted:

- Archbow w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable /5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Archbow w/50 “other offer”
- (TC OR TrialCard OR “Trial Card”) w/50 identif\*
- (TC OR TrialCard OR “Trial Card”) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)
- (RIS OR RISRx) w/50 identif\*
- (RIS OR RISRx) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)

- “CAP 2023” OR “CAP 23” OR “CAP ’23”
- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya OR Skyrizi) w/50 (CarePath OR “Care Path” OR CP OR JCP OR “WithMe”)
  - Time Period: January 1, 2021 through November 7, 2023.
- (STELARA\* OR TREMFYA\* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
  - Time Period: January 1, 2021 to November 7, 2023.
- ((coupon\* OR discount\* OR “prescription savings card\*” OR “free trial\*”) w/30 (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”)) AND (accumulat\* OR maximiz\*) AND (enforc\* OR eligib\* OR ineligib\*)
- “This program offer may not be used with any other coupon, discount, prescription savings card, free trial, or other offer”
- Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program") AND ((term\* w/3 condition) OR T&C OR TNC OR "other offer") AND (maximiz\* OR accumulat\*)
- “other offer” w/5 (accumulat\* OR maximiz\* OR “health plan\*” OR in-sur\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial\*”)
- ((Max\* w/15 benefit\*) w/50 (chang\* OR increas\* OR decreas\*)) AND (\$20,000 OR \$20K OR 20k)

We request a response by August 30, 2024. We reserve all rights and are available to meet and confer.

Best,

/s/ Elizabeth Snow

Elizabeth H. Snow  
Associate

*Search terms applicable to all CAP Custodians*

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR accumulat\* OR maximiz\*)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)
- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”
- “Save On” (*case sensitive*)
- “save on” w/50 (accumulat\* OR maximiz\* OR “essential health benefit\*” OR EHB\* OR “non-essential health benefit\*” OR “nonessential health benefit\*” OR NEHB\* OR accredo OR ESI OR “express scripts”)
- “other offer” W/5 (accumulat\* OR maximiz\*)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat\* OR maximiz\*)
- (Accredo OR Acredo) w/50 (accumulat\* OR maximiz\*)
- (“essential health benefit\*” OR EHB\* OR “non-essential health benefit” OR “nonessential health benefit\*” OR NEHB\*) W/50 (“CAPa” OR CAPm OR “adjustment program” OR accumulat\* OR maximiz\*)



# Exhibit 8

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Elizabeth H. Snow

Associate

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August 23, 2024

**Via E-mail**

Julia Long

Patterson Belknap Webb &amp; Tyler LLP

1133 Avenue of the Americas

New York, NY 10036

jlong@pbwt.com

**Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC* (Case No. 2:22-cv-02632-JKS-CLW)**

Dear Julia,

SaveOn writes in partial response to J&J's August 13, 2024 letter regarding some of the custodians whom SaveOn requested in its July 19, 2024 letter.

**I. Katie Hanculak**

As SaveOn explained in its July 19, 2024 Letter, Hanculak did work relevant to (1) the meaning of the T&Cs; (2) J&J's damages; and (3) mitigation.

J&J fails to address twelve of SaveOn's cited documents. Among those, in JJHCS\_00035075, [REDACTED]

JJHCS\_00035075. [REDACTED]

t. *Id.* at -077-78. [REDACTED]. *Id.* In JJHCS\_00215136, [REDACTED]

Accord JJHCS\_00246418. In JJHCS\_00274005, [REDACTED]

JJHCS\_00274007. [REDACTED]

, *id.* at -010, and [REDACTED]*id.* at -011. In [REDACTED]

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JJHCS\_00272514, [REDACTED] *Id.* (emphasis added). She also [REDACTED]

*Id.*

In 2020, [REDACTED]

. JJHCS\_00222523.

JJHCS\_00117523.

Hanculak educated others within J&J about [REDACTED]

JJHCS\_00139323. In July 2021, [REDACTED]

JJHCS\_00145630— [REDACTED]

JJHCS\_0145633

at -642; see also JJHCS\_00145940 at 10. [REDACTED]

Even before the CAP program officially launched, Hanculak began to [REDACTED]

JJHCS\_00074656; see also JJHCS\_000074660 (n

); JJHCS\_00120406 (

). S

. JJHCS\_00140333 ( [REDACTED] ); JJHCS\_00140336 (Q1 2021) ( [REDACTED]

). Hanculak

JJHCS\_0034866.

JJHCS\_00276557. Hanculak was a

JJHCS\_00272749

at -756, [REDACTED]

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*Id.* at -750.

JJHCS\_00035225;

JJHCS\_00119627,

. JJHCS\_00146263 ( ); JJHCS\_00146276

).

Hanculak was also

JJHCS\_00272514.

JJHCS\_00272720.

J&J says that Hanculak's role was limited to immunology products during the relevant period, so her documents would be duplicative of documents from other custodians, including Lindsey Anderson, who worked on patient experience issues for immunology products. J&J's assertion is undermined by the documents that SaveOn cites.

JJHCS\_00253805 at

-809.

. *See also* JJHCS\_00139314 (

. *Id.*

J&J says that Hanculak's documents would be cumulative of

JJHCS\_00117039,

JJHCS\_00117039.

*Id.*; *see also* JJHCS\_00034977 (

JJHCS\_00034982 (

); JJHCS\_00034984 (

JJHCS\_00034987 (

. *See* JJHCS\_00034989 (

. *See* JJHCS\_00118665 ("

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SaveOn proposes that J&J run the CAP terms in Appendix 1 and the Tiger Team term in Appendix 2 over Hanculak's custodial files along with the following terms:

- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya) w/50 (CarePath OR "Care Path" OR CP OR JCP OR "WithMe")
  - Time Period: January 1, 2021 to November 7, 2023
- (STELARA\* OR TREMFYA\* OR CarePath OR JCP OR "Savings Program") w/25 (6000 OR 6,000 OR limit OR eliminate)
  - Time Period: January 1, 2021 to November 7, 2023
- ((coupon\* OR discount\* OR "prescription savings card\*" OR "free trial\*") w/30 (Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program")) AND (accumulat\* OR maximiz\*) AND (enforc\* OR eligib\* OR ineligib\*)
- (Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program") AND ((term\* w/3 condition) OR T&C OR TNC OR "other offer") AND (maximiz\* OR accumulat\*)
- "This program offer may not be used with any other coupon, discount, prescription savings card, free trial, or other offer"
- "other offer" w/5 (accumulat\* OR maximiz\* OR "health plan\*" OR in-sur\*)
- Avalere w/50 (accumulator\* OR maximizer\* OR mitigat\* OR "NEHB" OR (variable /5 "EHB") OR "CAPa" OR "CAPm" OR "adjustment program")
- Avalere w/50 "other offer"
- ((Max\* w/15 benefit\*) w/50 (chang\* OR increas\* OR decreas\*)) AND (\$20,000 OR \$20K OR 20k)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 ("other offer\*" OR coupon\* OR discount\* OR "savings card\*" OR "free trial\*")
- (TC OR TrialCard OR "Trial Card") w/50 identif\*

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- (TC OR TrialCard OR “Trial Card”) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)

## II. Elizabeth Kreul-Starr

As SaveOn explained in its July 19, 2024 letter, Kreul-Starr was part of discussions of modifications of CarePath’s T&Cs, JJHCS\_000035075; JJHCS\_00204707, and [REDACTED] eligibility, JJHCS\_00222619. Additional documents reveal that t [REDACTED] [REDACTED].

Kreul-Starr was part of J&J’s initial response to accumulators, maximizers, and SaveOn. [REDACTED]

[REDACTED] JJHCS\_00221267 ([REDACTED]); see also JJHCS\_00221271; JJHCS\_00221286. [REDACTED]

[REDACTED] JJHCS\_00221269. [REDACTED]

[REDACTED], JJHCS\_00246332, [REDACTED].

Kreul-Starr [REDACTED]

[REDACTED] See, e.g., JJHCS\_00117264 at -271 ([REDACTED])

[REDACTED] JJHCS\_0080822 ([REDACTED])

[REDACTED] JJHCS\_0073803 ([REDACTED])

[REDACTED] JJHCS\_00073804 at 55 (original emphasis).

Kreul-Starr was also involved in [REDACTED]

[REDACTED] JJHCS\_00252942 ([REDACTED])

[REDACTED]; see also [REDACTED]

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JJHCS\_00252940 (

JJHCS\_00026193.

JJHCS\_00001709.

Kreul-Starr also worked on the CAP program—

JJHCS\_00001215 (

).

.” JJHCS\_00001221.

Following that email, M

SaveOn. JJHCS\_00001853.

See JJHCS\_00011222 (

”). Kreul-

Starr

t. JJHCS\_00183953.

\_00034356

).

Kreul-Starr

See, e.g., JJHCS\_00220716 (

).

JJHCS\_00272715 (emphasis added)

( ). In August 2020,

JJHCS\_00131556 (attaching JJHCS\_00131558)—

, see

July 3, 2024 Ltr at 1.

JJHCS\_00134107,

, JJHCS\_00042679 (

). She was also

JJHCS\_00117527. Kreul-Starr was

JJHCS\_00205880.

Kreul-Starr reported and presented directly to J&J’s highest decisionmakers about the CarePath program and advised them on their decision.

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[REDACTED] . JJHCS\_0022619 (attaching JJHCS\_0022623  
and JJHCS\_0022624).  
[REDACTED] s.  
JJHCS\_00145955.  
[REDACTED] Id. In  
[REDACTED] e,  
JJHCS\_00227654; JJHCS\_00140477 (  
[REDACTED]); JJHCS\_00140480 (  
[REDACTED]), including  
[REDACTED]  
JJHCS\_00227657 at -663.  
[REDACTED], JJHCS\_00011220,  
[REDACTED] .” JJHCS\_00002989.

Kreul-Starr oversaw third parties in connection with her work on the CAP  
program: [REDACTED]

[REDACTED] . JJHCS\_00141593.  
[REDACTED] .  
JJHCS\_00254217 (attaching JJHCS\_00254219). She also [REDACTED]  
[REDACTED] JJHCS\_00145795 (  
JJHCS\_00145797).  
[REDACTED] . JJHCS\_00145390.  
[REDACTED] JJHCS\_00001745.  
[REDACTED] JJHCS\_00001853.

J&J asserts that Kreul-Starr’s role was limited to Immunology and that her  
documents would be duplicative of other Immunology custodians’ documents. In  
fact, Kreul-Starr is likely to have unique, relevant documents. She organized calls,  
answered questions, and received and sent emails that only made their way to cus-  
todians later by happenstance. [REDACTED]

[REDACTED] JJHCS\_00245731—  
[REDACTED]  
JJHCS\_00002454,  
JJHCS\_00002456.  
[REDACTED] ,



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JJHCS\_00083211, [REDACTED] . See  
JJHCS\_00083216 at 0246.  
[REDACTED] JJHCS\_00000630.  
[REDACTED]  
[REDACTED] JJHCS\_00246492.  
[REDACTED] , JJHCS\_00104961,  
[REDACTED] , JJHCS\_00146124 (attaching  
JJHCS\_00146125),  
[REDACTED] .<sup>1</sup>

SaveOn proposes that J&J run the CAP terms in Appendix 1 and the Tiger Team term in Appendix 2 over Kreul-Starr's custodial files along with the following terms:

- (STELARA\* OR TREMFYA\* OR CarePath OR JCP OR "Savings Program") w/25 (6000 OR 6,000 OR limit OR eliminate)
  - Time Period: January 1, 2021 to November 7, 2023
- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya) w/50 (CarePath OR "Care Path" OR CP OR JCP OR "WithMe")
  - Time Period: January 1, 2021 to November 7, 2023
- "This program offer may not be used with any other coupon, discount, prescription savings card, free trial, or other offer"
- "other offer" w/5 (accumulat\* OR maximiz\* OR "health plan\*" OR insur\*)
- ((coupon\* OR discount\* OR "prescription savings card\*" OR "free trial\*") w/30 (Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program")) AND (accumulat\* OR maximiz\*) AND (enforc\* OR eligib\* OR ineligib\*)

---

<sup>1</sup> J&J did not address JJHCS\_00204707 or JJHCS\_00222619, which [REDACTED]

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- (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term\* w/3 condition) OR T&C OR TNC OR “other offer”) AND (maximiz\* OR accumulat\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial”\*)
- ((Max\* w/15 benefit\*) w/50 (chang\* OR increas\* OR decreas\*)) AND (\$20,000 OR \$20K OR 20k)
- Archbow w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable w/5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Archbow w/50 “other offer”
- Avalere w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable w/5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Avalere w/50 “other offer”
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial”\*)
- (TC OR TrialCard OR “Trial Card”) w/50 identif\*
- (TC OR TrialCard OR “Trial Card”) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)
- (McKinsey OR Syneos) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)

### III. Matthew Saggese

As SaveOn explained in its July 19, 2024 letter, Saggese did work relevant to (1) mitigation, (2) J&J’s GBL claim, and (3) the meaning of CarePath’s T&Cs.

J&J does not address JJHCS\_00253558,

*s. Id.*

*. Id.*

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*Id.*

JJHCS\_00253352. In response,

See JJHCS\_00258993.

J&J suggests that Saggese led “[REDACTED]”  
[REDACTED] s. See Aug. 13, 2024 Ltr. at 9. In fact, [REDACTED]  
[REDACTED] JJHCS\_00232642  
at -668; see also JJHCS\_00259769 ([REDACTED]  
[REDACTED]).  
[REDACTED] See JJHCS\_00140002 at -009 ([REDACTED]  
[REDACTED]);  
see also JJHCS\_00266836 ([REDACTED]  
[REDACTED]). Saggese likely possesses unique, relevant documents related to  
his work as a [REDACTED]

SaveOn proposes that J&J run the CAP terms in Appendix 1 over Saggese’s custodial files along with the following terms:

- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya) w/50 (CarePath OR “Care Path” OR CP OR JCP OR “WithMe”)
  - Time Period: January 1, 2021 to November 7, 2023
- (STELARA\* OR TREMFYA\* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
  - Time Period: January 1, 2021 to November 7, 2023
- ((“coupon\*” OR “discount\*” OR “prescription savings card\*” OR “free trial\*”) w/30 (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”)) AND ((accumulat\* OR maximiz\*) AND (“enforc\*” OR “eligib\*” OR “ineligib\*”))
- (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term\* w/3 condition) OR T&C OR TNC OR “other offer”) AND (maximiz\* OR accumulat\*)
- “This program offer may not be used with any other coupon, discount, prescription savings card, free trial, or other offer”

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- “other offer” w/5 (accumulat\* OR maximiz\* OR “health plan\*” OR in-sur\*)
- ((Max\* w/15 benefit\*) w/50 (chang\* OR increas\* OR decreas\*)) AND (\$20,000 OR \$20K OR 20k)
- (USD OR “US Digestive” OR “buy and bill” OR “buy-and-bill”) w/50 (CAPa OR CAPm OR accumulat\* OR maximizer\* OR exception\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial”)

#### IV. Jane Frechette

As SaveOn explained in its July 19, 2024 letter, Frechette did work relevant to (1) the meaning of CarePath’s T&C’s; (2) J&J’s GBL claim; and (3) mitigation.

Frechette’s involvement in these topics was much more than “tangential,” as J&J asserts. For example, [REDACTED]

[REDACTED] See JJHCS\_00267848 [REDACTED]; JJHCS\_00259753 [REDACTED]. J&J has not produced, to SaveOn’s knowledge, any documents in which current custodians instruct Frechette to perform this work, indicating that it was not done “in close coordination with existing custodians.” See Aug. 13, 2024 Ltr. at 5-6. [REDACTED]

[REDACTED], see JJHCS\_00231009—  
[REDACTED] s. See JJHCS\_00145406  
at -466. [REDACTED]

[REDACTED] JJHCS\_00142238. [REDACTED] Id. [REDACTED].

Frechette also [REDACTED]

[REDACTED] See JJHCS\_00035075. [REDACTED]

[REDACTED] . See id. [REDACTED]

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JJHCS\_00080271.

. JJHCS\_00117463.

. See

JJHCS\_00253805 (

); JJHCS\_00258539 (

); JJHCS\_00182191 (

);

JJHCS\_00258870 (

). Frechette's documents are likely to shed light on how

SaveOn proposes that J&J run the CAP terms in Appendix 1 over Frechette's custodial files along with the following terms:

- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya) w/50 (CarePath OR "Care Path" OR CP OR JCP OR "WithMe")
  - Time Period: January 1, 2021 to November 7, 2023
- (STELARA\* OR TREMFYA\* OR CarePath OR JCP OR "Savings Program") w/25 (6000 OR 6,000 OR limit OR eliminate)
  - Time Period: January 1, 2021 to November 7, 2023
- (("coupon\*" OR "discount\*" OR "prescription savings card\*" OR "free trial\*") w/30 (Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program")) AND ((accumulat\* OR maximiz\*) AND ("enforc\*" OR "eligib\*" OR "ineligib\*"))
- (Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program") AND ((term\* w/3 condition) OR T&C OR TNC OR "other offer") AND (maximiz\* OR accumulat\*)
- "This program offer may not be used with any other coupon, discount, prescription savings card, free trial, or other offer"
- "other offer" w/5 (accumulat\* OR maximiz\* OR "health plan\*" OR in-sur\*)
- ((Max\* w/15 benefit\*) w/50 (chang\* OR increas\* OR decreas\*)) AND (\$20,000 OR \$20K OR 20k)

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- (patient w/15 exhaust) AND (accumulat\* OR maximizer\* OR CAPa OR CAPm)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial\*”)

## V. Casey Sasse

As SaveOn explained in its July 19, 2024 letter, Sasse (1) [REDACTED],  
[REDACTED],  
JJHCS\_00253815; (2) [REDACTED],  
JJHCS\_00140862; and (3) [REDACTED],  
JJHCS\_00155583 [REDACTED]; JJHCS\_00193651 [REDACTED]).

J&J asserts that Sasse’s role was limited to Immunology, so her documents would be duplicative or cumulative of other Immunology custodians’ documents.

In fact, [REDACTED] JJHCS\_00033653 at 11. [REDACTED]  
[REDACTED] JJHCS\_00198241. [REDACTED]  
[REDACTED] . *Id.* [REDACTED]  
[REDACTED] JJHCS\_00140862. [REDACTED]  
[REDACTED] . *Id.* [REDACTED]  
[REDACTED] JJHCS\_00191210 ( [REDACTED] JJHCS\_00191211). [REDACTED]  
[REDACTED] JJHCS\_00268523. This indicates that she would have unique documents regarding the [REDACTED].

Documents show that Sasse’s relevant documents often reached current custodians only by happenstance. [REDACTED]

[REDACTED] JJHCS\_00193651. [REDACTED], JJHCS\_00193697, [REDACTED].

J&J also asserts that Sasse undertook data analysis only at the direction of or in conjunction with current custodians. In fact, [REDACTED]

[REDACTED] is. [REDACTED]  
[REDACTED] JJHCS\_00253815 [REDACTED]  
[REDACTED] In JJHCS\_00155583, [REDACTED]. In [REDACTED]

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JJHCS\_00231154, [REDACTED]  
[REDACTED] . JJHCS\_00231117;  
JJHCS\_00231149; JJHCS\_00231152; JJHCS\_00231154 ([REDACTED]  
[REDACTED] a).

Additional documents confirm that Sasse was a [REDACTED]  
[REDACTED] . JJHCS\_00231311.  
[REDACTED] .  
JJHCS\_00145742; JJHCS\_00259564; JJHCS\_00155299 ([REDACTED]  
[REDACTED] ).  
[REDACTED] . JJHCS\_00151819; *see also* JJHCS\_00155583;  
JJHCS\_00155650; JJHCS\_00259564 ([REDACTED]  
[REDACTED] ).  
[REDACTED] . JJHCS\_00155299  
at -306.  
JJHCS\_00243121.  
[REDACTED] JJHCS\_00231311.  
[REDACTED] .  
JJHCS\_00274787.  
[REDACTED] . JJHCS\_00191482.  
[REDACTED]

SaveOn proposes that J&J run the CAP terms in Appendix 1 and the Tiger Team term in Appendix 2 over Sasse's custodial files along with the following terms:

- ((Max\* w/15 benefit\*) w/50 (chang\* OR increas\* OR decreas\*)) AND (\$20,000 OR \$20K OR 20k)
- Archbow w/50 (accumulator\* OR maximizer\* OR mitigat\* OR "NEHB" OR (variable /5 "EHB") OR "CAPa" OR "CAPm" OR "adjustment program")
- Archbow w/50 "other offer"
- Avalere w/50 (accumulator\* OR maximizer\* OR mitigat\* OR "NEHB" OR (variable /5 "EHB") OR "CAPa" OR "CAPm" OR "adjustment program")
- Avalere w/50 "other offer"
- IQVIA w/15 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR "adjustment program")

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- (TC OR TrialCard OR “Trial Card”) w/50 identif\*
- (TC OR TrialCard OR “Trial Card”) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)
- Sundial w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)
- “other offer” w/5 (accumulat\* OR maximiz\* OR “health plan\*” OR in-sur\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial”)

## VI. Barbara McCabe

As SaveOn explained in its July 19, 2024 letter, McCabe did work relevant to (1) mitigation, (2) the meaning of CarePath’s T&C’s, and (3) J&J’s damages.

J&J asserts that McCabe’s work as an editor means she did not make adequately substantive decisions regarding CarePath. *See* Aug. 13, 2024 Ltr. at 8. In fact,

[REDACTED], *see* JJHCS\_00002677, [REDACTED], *see* JJHCS\_00222542, [REDACTED], *see* JJHCS\_00105484, [REDACTED], *see* JJHCS\_00143050. [REDACTED]. *See* JJHCS\_00220768 ([REDACTED]); JJHCS\_00157410 ([REDACTED]). [REDACTED]. *See, e.g.,* JJHCS\_00275755 ([REDACTED]). [REDACTED].

McCabe also did significant, relevant work on CarePath outside of her role as an editor. [REDACTED]

[REDACTED]. *See* JJHCS\_00130796, JJHCS\_00130795 (“Katie and I both worked on compiling this”). [REDACTED]

[REDACTED]. *See* JJHCS\_00130796 ([REDACTED]) McCabe [REDACTED]. [REDACTED], *See* JJHCS\_00230918 at 53. No other current custodian was on this team, meaning McCabe is likely to have unique, relevant documents related to its work.



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SaveOn proposes that J&J run the CAP terms in Appendix 1 over McCabe's custodial files along with the following terms:

- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya) w/50 (CarePath OR "Care Path" OR CP OR JCP OR "WithMe")
  - Time Period: January 1, 2021 to November 7, 2023
- (STELARA\* OR TREMFYA\* OR CarePath OR JCP OR "Savings Program") w/25 (6000 OR 6,000 OR limit OR eliminate)
  - Time Period: January 1, 2021 to November 7, 2023
- ((("coupon\*" OR "discount\*" OR "prescription savings card\*" OR "free trial\*") w/30 (Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program")) AND ((accumulat\* OR maximiz\*) AND ("enforc\*" OR "eligib\*" OR "ineligib\*")))
- (Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program") AND ((term\* w/3 condition) OR T&C OR TNC OR "other offer") AND (maximiz\* OR accumulat\*)
- "This program offer may not be used with any other coupon, discount, prescription savings card, free trial, or other offer"
- "other offer" w/5 (accumulat\* OR maximiz\* OR "health plan\*" OR insur\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 ("other offer\*" OR coupon\* OR discount\* OR "savings card\*" OR "free trial\*")

## VII. Kevin Kleemeier

SaveOn explained how Kleemeier (1)

JJHCS\_00236748; (2)  
JJHCS\_00219266 (attaching JJHCS\_00219267).; and (3)

.JJHCS\_00236825.

JJHCS\_00225165 ("A  
").

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J&J asserts that the cited documents do not indicate that Kleemeier did any substantive work. In fact, they show that he was involved in J&J's initial response to SaveOn, accumulators, and maximizers. [REDACTED]

JJHCS\_00222271.  
 .Id.

JJHCS\_00236748.

see also JJHCS\_00237184 (

[REDACTED]. JJHCS\_00237114. It appears that that one of J&J's initial strategies to respond to SaveOn was to pressure its advocacy group partners to publish articles against SaveOn, and [REDACTED].<sup>2</sup> This is relevant to J&J's allegations that SaveOn purportedly caused patients stress and confusion. Compl. ¶ 114.

SaveOn proposes that J&J run the CAP terms in Appendix 1 over Klee-meier's custodial files along with the following terms:

- “This program offer may not be used with any other coupon, discount, prescription savings card, free trial, or other offer”
- “other offer” w/5 (accumulat\* OR maximiz\* OR “health plan\*” OR insur\*)
- ((coupon\* OR discount\* OR “prescription savings card\*” OR “free trial\*”) w/30 (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”)) AND (accumulat\* OR maximiz\*) AND (enforc\* OR eligib\* OR ineligib\*)

<sup>2</sup> Kleemeier continued to be involved in J&J's response throughout the relevant period: [REDACTED]

, JJHCS\_00026284; and

JJHCS 00158301.

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- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya) w/50 (CarePath OR “Care Path” OR CP OR JCP OR “WithMe”)
  - Time Period: January 1, 2021 to November 7, 2023
- (STELARA\* OR TREMFYA\* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
  - Time Period: January 1, 2021 to November 7, 2023
- Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term\* w/3 condition) OR T&C OR TNC OR “other offer”) AND (maximiz\* OR accumulat\*)
- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 (“other offer\*” OR coupon\* OR discount\* OR “savings card\*” OR “free trial”\*)
- ((Max\* w/15 benefit\*) w/50 (chang\* OR increas\* OR decreas\*)) AND (\$20,000 OR \$20K OR 20k)
- “Arthritis Foundation” w/50 (accumulator\* OR maximizer\* OR “adjustment program”)
- Avalere w/50 (accumulator\* OR maximizer\* OR mitigat\* OR “NEHB” OR (variable /5 “EHB”) OR “CAPa” OR “CAPm” OR “adjustment program”)
- Avalere w/50 “other offer”

### VIII. Mitchell Akright

As SaveOn explained in its July 19, 2024 letter, Akright did work relevant to (1) mitigation; and (2) J&J’s GBL claim. [REDACTED]

[REDACTED], JJHCS\_00183029, Akright likely possesses key documents related to the implementation of the CAP program in three stages: (1) [REDACTED], see JJHCS\_00145337; (2) [REDACTED], see JJHCS\_00195792; and (3) [REDACTED], see JJHCS\_00261232.

J&J says this work is irrelevant because, it represents, Akright was not a “decision-maker.” See Aug. 13, 2024 Ltr. at 4. In fact, [REDACTED] JJHCS\_00117039. Akright’s work goes to how J&J understood, implemented, and revised the CAP program. To implement the CAP program, for example, [REDACTED]

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JJHCS\_00145343 at -372. Akright is likely to have documents on these subjects.

J&J asserts that Akright's files are likely duplicative of existing custodians, but [REDACTED]

. See JJHCS\_00146296 (

JJHCS\_00145337 (“

. JJHCS\_00117039.

SaveOn proposes that J&J run the CAP terms in Appendix 1 and the Tiger Team term in Appendix 2 over Akright's custodial files along with the following term:

- “Red Nucleus” w/50 “CAP”

## IX. Cecilia Trybus

As SaveOn explained in its July 19, 2024 letter, Trybus did work relevant to J&J's mitigation efforts. [REDACTED]

See JJHCS\_00144065

*see also* JJHCS\_00218944 (d

; JJHCS\_00159322 at -345 (

J&J asserts that

*See* JJHCS\_00257688 at -690.

See JJHCS\_00164517 (

JJHCS\_00164519 at -523 (

JJHCS\_00232136 at -138,

*Id.* at -154.

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[REDACTED] are relevant to J&J's allegations of patient harm.

SaveOn proposes that J&J run the CAP terms on Appendix 1 over Trybus's custodial files along with the following term:

- (“Nurse Navigator\*” OR “NN\*”) w/50 (“CAP”)

\*

\*

\*

Please let us know if J&J will agree to add these individuals as custodians and run the requested search terms over their custodial files. If you object based burden (or on grounds that their documents would duplicate or be cumulative of existing custodians' documents) for any custodian, please provide hit counts for each search term for each such custodian.

We request a response by August 30, 2024, and a meet-and-confer on September 5 or 6, 2024. Please provide available times for such a meet-and-confer. We reserve all rights and are available to meet and confer.

Best,

/s/ Elizabeth Snow

Elizabeth H. Snow  
Associate

Julia Long  
August 23, 2024

### **Appendix 1**

*Search terms applicable to all CAP Custodians*

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR accumulat\* OR maximiz\*)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)
- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
- “Save On” (*case sensitive*)
- “save on” w/50 (accumulat\* OR maximiz\* OR “essential health benefit\*” OR EHB\* OR “non-essential health benefit\*” OR “nonessential health benefit\*” OR NEHB\* OR accredo OR ESI OR “express scripts”)
- “other offer” W/5 (accumulat\* OR maximiz\*)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat\* OR maximiz\*)
- (Accredo OR Acredo) w/50 (accumulat\* OR maximiz\*)
- (“essential health benefit\*” OR EHB\* OR “non-essential health benefit\*” OR “nonessential health benefit\*” OR NEHB\*) W/50 (“CAPa” OR CAPm OR “adjustment program” OR accumulat\* OR maximiz\*)

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## **Appendix 2**

### *Search term related to the Tiger Team*

- “Tiger Team” w/50 (accumulat\* OR maximiz\* OR copay OR co-pay OR CAP OR CAPa OR CAPm OR “adjustment program”)

# Exhibit 9



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Associate

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August 13, 2024

**Via E-mail**

Julia Long

Patterson Belknap Webb &amp; Tyler LLP

1133 Avenue of the Americas

New York, NY 10036

jlong@pbwt.com

**Re: Johnson & Johnson Health Care Systems Inc. v. Save On SP,  
LLC (Case No. 2:22-cv-02632-ES-CLW)**

Dear Julia,

We write to request that J&J run additional search terms over the custodial files of Scott White and Blasing Penkowski. Judge Wolfson ordered J&J to add White and Penkowski as custodians and directed that “limited search terms” be run over their files, Jan. 24, 2024 Hr’g Tr. at 128:23, in response to J&J’s concern that, without more evidence of their active engagement with issues relevant to this case, their files could be duplicative of other custodians. *See id.* at 128:22–129:5. Recently produced documents demonstrate that White and Penkowski had greater personal involvement with the relevant issues of this case than previously disclosed, warranting further discovery.

**I. Diversion Program Search Terms**

SaveOn asks J&J to run search terms related to copay assistance “diversion programs” over White’s and Penkowski’s files. Both custodians used the term “diversion program” to SaveOn, accumulators and maximizers, so documents referring to so-called diversion programs are responsive to RFP No. 8.

**Scott White.**

JJHCS\_00227401.

JJHCS\_00229802.

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[REDACTED]. See JJHCS\_00229835,  
JJHCS\_00229824.

**Blasine Penkowski.** [REDACTED]

JJHCS\_00273150.

JJHCS\_00227056.

. JJHCS\_00183840.

JJHCS\_00229086.

.” JJHCS\_00227193.

Judge Wolfson has routinely ordered J&J to run search terms that J&J used to refer SaveOn. *See, e.g.*, Feb. 6, 2024 Order at 29 (noting that J&J used the term “accumulators’...internally to refer to SaveOnSP’s programs”); Apr. 10, 2024 Order at 3 (ordering an “NEHB” search string). SaveOn accordingly requests that J&J run the following two search terms, for the time period from April 1, 2016 to November 7, 2023, over the files of White and Penkowski:

- “diversion program\*”
- Diver\* w/25 (“copay\*” OR “co pay\*” OR “co-pay\*” OR (CarePath w/5 “fund\*”) OR “patient assistance”)

## II. RIS Rx Search Terms

SaveOn asks J&J to run search terms related to its vendor relationship with RIS Rx over White’s files. [REDACTED]

JJHCS\_00231138. J&J has indicated that it intends to seek damages relating to funds it expends to identify patients. *See* July 15 Hr’g Tr. at 40:23 – 41:3 (alleging special damages for “money spent to detect and avoid [SaveOn’s] conduct on vendors and other things like that”). J&J’s relationship with RIS Rx is relevant for the same reasons that J&J’s relationship with TrialCard (which also ran benefits investigations to identify patients on accumulators, maximizers, or SaveOn-advised plans) is relevant. *See* Feb. 6, 2024 Order at 28 (finding White’s involvement with a TrialCard work order sufficient to order relevant search terms).

J&J’s only argument to date against running search terms relating to RIS Rx over White’s files is the apex doctrine. *See* Apr. 26, 2024 Ltr. from I. Eppler to E. Snow at 4, n.2. As we have repeatedly explained, however, that doctrine does not allow a party to withhold an executive’s relevant documents. *See Sandoz, Inc. v. United Therapeutics Corp.*, 2020 WL 13830525, at \*3 (D.N.J. Nov. 16, 2020)

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(“[T]he ‘apex doctrine,’ while it may be applicable to depositions, is not a protective shield that prohibits document discovery from high-ranking executives.”).

SaveOn accordingly requests that J&J run the following two search terms, for the time period from April 1, 2016 to November 7, 2023, over White’s files:

- (RIS OR RISRx) w/50 identif\*
- (RIS OR RISRx) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)

### III. TrialCard Statements of Work Search Terms

SaveOn asks J&J to run additional search terms related to negotiations for TrialCard Statements of Work over White’s and Penkowski’s files. As Judge Wolfson held, these documents are relevant to SaveOn’s mitigation defense. *See* Apr. 3, 2024 Hr’g Tr. at 90:4-8. Judge Wolfson ordered the parties to negotiate appropriate search terms to capture documents related to these negotiations. *See* Apr. 10, 2024 Order at 3-4.

The parties agreed to one search term, from which J&J has now substantially completed producing documents. *See* July 3, 2024 Ltr. from J. Long to E. Snow at 1-2 (explaining that J&J substantially completed production on this term on May 31, 2024).<sup>1</sup> J&J apparently produced only two documents responsive to this search term from Penkowski’s files and none from White’s. This indicates that the term was too restrictive and that additional terms are warranted. *See* Feb. 6, 2024 Order at 14 (ordering a new set of search terms when the lack of documents produced by one search term revealed it was too “restrictive”).

SaveOn asks J&J to run the following two search terms, for the time period from April 1, 2016 to November 7, 2023, over White’s and Penkowski’s files:

- (TC OR TrialCard OR “Trial Card”) w/50 identif\*
- (TC OR TrialCard OR “Trial Card”) w/50 (accumulator\* OR maximizer\* OR CAPm OR CAPa OR “adjustment program”)

---

<sup>1</sup> That search term is (“TrialCard” OR “Trial Card” OR TC) AND ((statement\* /5 work) OR “SOW\*” OR contract\*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “With Me” OR (with w/2 me)) AND (BALVERSA OR DARZALEX OR ERLEADA OR IMBRUVICA OR OPSUMIT OR PREZCOBIX OR REMICADE OR RYBREVANT OR SIMPONI OR STELARA OR SYMTUZA OR TRACLEER OR TREMFYA OR UPTRAVI OR VENTAVIS OR ZYTIGA OR EDURANT OR INTELENCE OR PONVORY). *See* July 3, 2024 Ltr. at 2.

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#### IV. Drafting Terms and Conditions Search Terms

SaveOn asks J&J to run search terms related to drafting terms and conditions over the White's files.

SaveOn has already explained why White should be custodian for this purpose, [REDACTED]

Long at 2 (citing JJHCS\_00225183, JJHCS\_00225190, JJHCS\_00256250<sup>2</sup>, JJHCS\_00235501, JJHCS\_00235503, and JJHCS\_00242783).

J&J asserts that JJHCS\_00235501 and JJHCS\_00235503  
[REDACTED]  
[REDACTED] June 14, 2024 Ltr. at 2. But  
[REDACTED].  
See JJHCS\_00225849 ([REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
JJHCS\_00225762 ([REDACTED]  
[REDACTED]); JJHCS\_00226546 ([REDACTED]  
[REDACTED]); JJHCS\_00226311 ([REDACTED]  
[REDACTED]); JJHCS\_00235102 ([REDACTED]  
[REDACTED]).

SaveOn asks J&J to run the following search term, for the time period from January 1, 2009 to April 1, 2016, over White's files:

- (CarePath OR “Savings Program” OR “Rebate Program” OR “Access Program” OR “copay assistance” OR “Instant Savings Card” OR YOU&I OR RemiStart OR AccessOne OR Darzalex OR Imbruvica OR Opsumit OR Remicade OR Simponi OR SimponiOne OR Stelara OR Sylvant OR SylvantOne OR Tracleer OR Uptravi OR Ventavis OR Zytiga OR ZytigaOne OR Invokana OR Xarelto OR Olysio OR Risperdal OR Invega)

<sup>2</sup> J&J disputes that [REDACTED]  
[REDACTED]  
[REDACTED]. June 14, 2024 Ltr. at 2. In fact, [REDACTED], see  
JJHCS\_00256250 at 52, [REDACTED].

3 [REDACTED]  
[REDACTED]  
[REDACTED] . See JJHCS\_00225200 at -  
250 ([REDACTED]  
[REDACTED]).

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w/10 ((term\* w/3 condition) OR “T&C” OR “TNC” OR “other offer” OR “coupon\*” OR “discount\*” OR “free trial” OR “prescription savings card”))

## V. Enforcement of Terms and Conditions Search Terms

SaveOn asks J&J to run search terms over White’s and Penkowski’s files that relate to J&J’s response to accumulators, maximizers, and SaveOn. White and Penkowski were actively and personally involved with this response.

### Scott White.

JJHCS\_00246403.

. See *id.*

see JJHCS\_00237099,

. See

JJHCS\_00229208.

. See

JJHCS\_00237171 (

JJHCS\_00237172).

.” See JJHCS\_00219212.

### Blasine Penkowski.

. See JJHCS\_00027236 (

JJHCS\_00027238,

); see

also JJHCS\_00026852 (

). Despite this,

see JJHCS\_00237099,

. JJHCS\_00140929.

JJHCS\_00142268,

JJHCS\_00229182.

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JJHCS\_00270881 ([REDACTED]).

SaveOn asks J&J to run the following search terms, for the time period from April 1, 2016 to November 7, 2023, over White's and Penkowski's files:

- (Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program") AND ((term\* w/3 condition) OR "T&C" OR "TNC" OR "other offer") AND (maximiz\* OR accumulat\*)
- (("coupon\*" OR "discount\*" OR "prescription savings card\*" OR "free trial\*") w/30 (Janssen OR Jannsen OR Jansen OR CarePath OR "Care Path" OR CP OR JCP OR "Savings Program")) AND ((accumulat\* OR maximiz\*) AND ("enforc\*" OR "eligib\*" OR "ineligib\*"))

## VI. May-Not-Use Provision of the Terms and Conditions

SaveOn asks J&J to run search terms over White's and Penkowski's files related to the meaning of the May-Not-Use Provision of its terms and conditions.

Judge Wolfson has already held that SaveOn is entitled to discovery "which could shed light on what [J&J] believed 'other offer' meant," Feb. 6, 2024 Order at 11, yet the very first indication in discovery thus far that J&J believed that SaveOn violates CarePath's terms and conditions [REDACTED].

[REDACTED]. See ARCHBOW\_000443 ([REDACTED]). When SaveOn previously requested documents interpreting the May-Not-Use provision from White and Penkowski, J&J asserted the request was not "limited" and, therefore, inappropriate for its apex custodians. See Aug. 7, 2024 Ltr. from J. Long to E. Snow at 2. But any earlier documents suggesting that SaveOn violates CarePath's May-Not-Use provision—to the extent they exist—likely reside in the files of White and Penkowski: [REDACTED].

[REDACTED]. See *supra* § V. If, for example, J&J believed that SaveOn violated CarePath's terms and conditions, [REDACTED].

[REDACTED], JJHCS\_00237099. See JJHCS\_00229208.

In light of this evidence, SaveOn reiterates its request that J&J run the following search term, for the time period from April 1, 2016 to November 7, 2023, over White's and Penkowski's files:

- ((violat\* OR bar\* OR prohibit\* OR breach\* OR preclude\* OR allow\* OR permit\*) w/50 (accumulat\* OR maximiz\*)) w/50 ("other offer\*" OR coupon\* OR discount\* OR "savings card\*" OR "free trial\*")

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## VII. Stelara and Tremfya Terms and Conditions

SaveOn asks J&J to run search terms over White's and Penkowski's files related to changes to CarePath's terms and conditions for Stelara and Tremfya as part of the CAP program. [REDACTED]

[REDACTED] JJHCS\_00277558 at -563. White and Penkowski, through their positions on JALT and subsequent work on the CAP program, see Apr. 3, 2024 Hr'g Tr. at 85:13-16 (calling both "CAP custodians"), are therefore likely to have unique, relevant documents related to the new Stelara and Tremfya terms and conditions.

SaveOn asks J&J to run the following search term, for the time period from January 1, 2021 to November 7, 2023, over White's and Penkowski's files:

- (revis\* OR rewrit\* OR chang\* OR maximizer\* OR accumulator\*) AND (term\* OR condition\*) w/50 (Stelara OR Tremfya) w/50 (CarePath OR "Care Path" OR CP OR JCP OR "WithMe")

We request a response by August 20, 2024. We are available to meet and confer.

Sincerely,

/s/ Elizabeth H. Snow

Elizabeth H. Snow  
Associate